2069.

SUPREME COURT OF THE UNITED STATES.

No. 181.

RICHARD WALDEN & AL., HEIRS AND REPRESENTATIVES OF AMBROSE WALDEN, DECEASED, APPELLANTS,

vs.

THOMAS BODLEY'S HEIRS AND REPRESENTATIVES, ROBERT POGUE'S HEIRS AND REPRESENTATIVES & AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR KENTUCKY.

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Pleas before the honorable Thomas B. Monroe, one of the judges of the eighth circuit court of the United States, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 10th day of June, 1847.

A. WALDEN
against
BODLEY'S heirs, &c.

Be it remembered, that heretofore, to wit, on the 25th day of November, in the year of our Lord one thousand eight hundred and thirty-four, came Ambrose Walden, by his counsel, Robert Wickliffe, esq., into the clerk's office of the seventh circuit court of the United States, district of Kentucky, and filed the following cross bill against Thomas Bodley's heirs and others, to wit:

Cross bill.

To the honorable the judges of the circuit [court] of the United States for the district of Kentucky, in chancery sitting, humbly complaining, Ambrose Walden, a citizen of the State of *the State of* Virginia, humbly complaining, sheweth unto your honors, that on the day of the Commonwealth of Virginia granted to him 1,333 acres of land by patent, bearing that date, but which patent contained a surplus of about acres; that at a very early period he caused actual possession to be taken of the land by entry thereon, with a view to take possession of the whole; that at a subsequent period, one Lewis Craig, (long since dead,) to wit, between years seventeen hundred and ninety and seventeen hundred and ninety-five, as he believes and hopes to prove, claiming to hold under your orator, entered upon the land, and settled thereon sundry tenants, he and they looking to and relying on your orator for title; they alleging to hold by purchase under Simon Kenton, who, as they further alleged, had by contract with your orator an undivided interest in the said land; that the holding and locating of said claim by said Craig and others was adverse to the claim of Bodley & Pogue, and that of Fox, &c., as patentee of Johnson's settlement and pre-emption, and all other titles whatever, except your orator's. Your orator states, that said tenants holding over after warned to deliver possession, he brought writs of ejectment against them, as will appear by sundry judgments in ejectment in this court; that these ejectments were first brought about [in] the year seventeen hundred and ninety-seven, and judgments were rendered in most of them about the period of seventeen hundred and ninety-eight; but for better information, reference is made to said judgments. That up to the time of his bringing said ejectments, and the judgments thereon, he believes and charges that no one was in possession of any part of his land who did not claim to hold under him; and if any such were in possession, he charges that

the possession of such an one must be limited to his actual close. But he particularly charges that, up to that time, neither Robert Pogue nor Thomas Bodley, nor any other claiming under them, had possession under the claim set up by them; and to be more fully hereafter stated, your orator states, that about the period of the obtaining of his judgments, the said Bodley & Pogue, as he supposes, made some executory contracts with your orator's tenants, by which they undertook to sell or protect them in their withholding the possession from your orator, and to effect their purpose, filed their bill with one or more of your orator's tenants, and obtained an injunction restraining your orators from taking out or executing writs of possession.

That after said injunction had depended many years, and your orator's demises had expired by length of time, the said Pogue and Bodley and others dismissed their bill. That, subsequently to the dismission of the bill and dissolution of the said injunction, your orator having applied to this court, and being overruled to extend his demises, he took his case to the supreme court, and by their opinion, expressed and intimated to this court, this court extended the demises to fifty years, and your orator took out writs of possession, and caused them to be executed in part, and would have been reinstated in the possession of his whole tract, except what he will hereafter set forth. But after he had executed his writs, in part as aforesaid, and leased, *and* to the following tenants, he was again arrested by a new bill and a new injunction, at the instance of the said Bodley and Pogue, which is still depending before this honorable court, to which injunction your orator answered, &c.; but your orator discovered pending this bill of injunction, that the said Bodley and Pogue had, about the time they dismissed their first bill in this court, filed a bill in chancery against your orator and others, in the Fleming circuit court, and had by some illegal and unjust proceedings obtained a decree against your orator as a non-resident by default, and under such decree, and notwithstanding the time allowed your orator to appear [had] not expired, obtained a deed or deeds for the whole of your orator's land, except about one hundred and fifty [acres] as sold by your *your* orator to his tenant, Dale Carter, who defended and obtained a decree. Your orator states, having made the discovery of the pendency of said decree, that he entered his appearance in the Fleming circuit court, and on his petition removed the case to this court; your orator states that a certain Duncan, who succeeded to the possession under the claim of your orator, or under the persons, or some of them evicted, filed his bill against your [orator,] setting up among other things a purchase under Bodley and Pogue; and he having departed this life, the suit has been renewed in the name of his heirs. That a certain Clarke having by some means, after he was settled under *under* your orator, connected himself with Fox & Co.'s claim; or after your orator had recovered against the tenants, connected himself with Johnson's claim, and perhaps that of Bodley and Pogue and others, filed his bill, and obtained his injunction, which was dismissed for the want of prosecution; and after your orator had obtained possession and leased in

part as aforesaid, the heirs of said Clarke filed their bill, and obtained their injunction. That he answered the bill of Bodley, Pogue, &c., but has filed no answer to the bill of revivor, but as he believes and charges, the said suit was revived in the names of the heirs of Bodley and Pogue, and the other complainants by consent; that no answers have been filed as to the cases of Duncan's heirs and Clarke's heirs, but answers to those bills as well as a supplemental answer to Bodley's bill are herewith tendered to be filed. Your orator states that said Bodley and Pogue, or one of them, before and after the commissioner's deed before referred, made sundry deeds for parcels of the land in controversy in the suits before referred to, and your orator is apprehensive that said Bodley and Pogue's heirs, or their alienees, intend to rely on these deeds to still further harrass him, after the suits aforesaid shall be decided by this court. Your orator states that most, if not the whole, of the defendants against whom he obtained judgments at law, have either died or departed from the State, so that to revive the suits or judgments at law will be attended with great hazard, expense, and delay, if it be at all practicable at this late day to obtain the possession under said judgments. He also states that the rents and profits of the land have been very great, all of which he is in justice and equity entitled to from the date of his demise, and all of which he fears he will be deprived of unless they are decreed him in equity. He, therefore, makes the judgments at law, the suits of equity, and deeds referred to, a part of this bill, and makes this bill a cross bill in the suits aforesaid, now pending before this court, and makes each and all of the complainants in said bills defendants in this suit, and prays of the court the process of spa. against the said complainants by which they, the said complainants, made defendants to this bill, may full, true, and perfect answers make to all and singular the allegations of this bill in as full and perfect a manner as if they were repeated in the form of interrogatories; and by a decree of your honors may the deed of the commissioner to the said Thomas Bodley and *and* the deeds made by them to the complainants, or any of them, so far as your orator is or may have rights or interest in the lands embraced by them, and should this court on the final hearing of the said cause, or either of them, dissolve said injunctions, or any of them, in whole or in part, then your orator prays that he be put into the possession of so much land as your orator shall so dissolve said injunctions, or any of them, for; and to decree to your orator deeds of release from the defendants.

Therefore, and further, that an account of the rents, issues, and profits of the said land, or so much thereof as said injunction, or any of them, shall be so dissolved, be taken and ascertained, and whatever there shall be, or whatever shall be the amount or value thereof, be decreed to your orator, and in all or any judgment or decree which may be rendered, that the rights and interests of Dale Carter be protected; and the premises considered, may it please your honors to grant to your orator such other and further relief as to equity shall belong; and he will ever pray, &c.

R. WICKLIFFE, *for Complainant.*

the possession of such an one must be limited to his actual close. But he particularly charges that, up to that time, neither Robert Pogue nor Thomas Bodley, nor any other claiming under them, had possession under the claim set up by them; and to be more fully hereafter stated, your orator states, that about the period of the obtaining of his judgments, the said Bodley & Pogue, as he supposes, made some executory contracts with your orator's tenants, by which they undertook to sell or protect them in their withholding the possession from your orator, and to effect their purpose, filed their bill with one or more of your orator's tenants, and obtained an injunction restraining your orators from taking out or executing writs of possession.

That after said injunction had depended many years, and your orator's demises had expired by length of time, the said Pogue and Bodley and others dismissed their bill. That, subsequently to the dismission of the bill and dissolution of the said injunction, your orator having applied to this court, and being overruled to extend his demises, he took his case to the supreme court, and by their opinion, expressed and intimated to this court, this court extended the demises to fifty years, and your orator took out writs of possession, and caused them to be executed in part, and would have been reinstated in the possession of his whole tract, except what he will hereafter set forth. But after he had executed his writs, in part as aforesaid, and leased, *and* to the following tenants, he was again arrested by a new bill and a new injunction, at the instance of the said Bodley and Pogue, which is still depending before this honorable court, to which injunction your orator answered, &c.; but your orator discovered pending this bill of injunction, that the said Bodley and Pogue had, about the time they dismissed their first bill in this court, filed a bill in chancery against your orator and others, in the Fleming circuit court, and had by some illegal and unjust proceedings obtained a decree against your orator as a non-resident by default, and under such decree, and notwithstanding the time allowed your orator to appear [had] not expired, obtained a deed or deeds for the whole of your orator's land, except about one hundred and fifty [acres] as sold by your *your* orator to his tenant, Dale Carter, who defended and obtained a decree. Your orator states, having made the discovery of the pendency of said decree, that he entered his appearance in the Fleming circuit court, and on his petition removed the case to this court; your orator states that a certain Duncan, who succeeded to the possession under the claim of your orator, or under the persons, or some of them evicted, filed his bill against your [orator,] setting up among other things a purchase under Bodley and Pogue; and he having departed this life, the suit has been renewed in the name of his heirs. That a certain Clarke having by some means, after he was settled under *under* your orator, connected himself with Fox & Co.'s claim; or after your orator had recovered against the tenants, connected himself with Johnson's claim, and perhaps that of Bodley and Pogue and others, filed his bill, and obtained his injunction, which was dismissed for the want of prosecution; and after your orator had obtained possession and leased in

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Therefore, and further, that an account of the rents, issues, and profits of the said land, or so much thereof as said injunction, or any of them, shall be so dissolved, be taken and ascertained, and whatever there shall be, or whatever shall be the amount or value thereof, be decreed to your orator, and in all or any judgment or decree which may be rendered, that the rights and interests of Dale Carter be protected; and the premises considered, may it please your honors to grant to your orator such other and further relief as to equity shall belong; and he will ever pray, &c.

R. WICKLIFFE, *for Complainant.*

R. Wickliffe makes oath, that so far as the foregoing bill contains statements from his own knowledge, it is true; and so far as is stated from papers and records, &c., or the information of others, he believes it to be true. He further states, that it [did] not appear to him as counsel to be necessary to file the bill before this term, but that he considers it more necessary, if not indispensable, to have justice done to his clients in the suits to which it refers. R. WICKLIFFE.

Sworn to in open court by Robert Wickliffe.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Upon which bill the following spa. issued, to wit:

Spa.

The United States of America, to the marshal of the district of Kentucky, greeting:

You are hereby commanded to summon Harry J. Bodley, William L. Bodley, Hugh S. Bodley, William H. Hurst and Ann J., his wife, late Ann J. Bodley, Edmund B. Church and Maria J., his wife, late Maria J. Bodley, John F. Bodley, Catharine E. Bodley, Thomas Bodley, C. S. F. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives of Thomas Bodley, deceased; James Pogue, John Pogue, Lindsey Pogue, Edwin Pogue, Robert Pogue, Samuel Garrison, and William Andrew Mackey, heirs and representatives of Robert Pogue, deceased; John Patton and Nancy, his wife, Thomas Patton and Amanda Patton, his wife, James Campbell and Mary Campbell, his wife, James Lindsey and Nancy Lindsey, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan, and Judith Lacy, Susan Lacey, Thomas Lacey, Charles Lacey, Walter Lacey, and Daniel Lacey, children and heirs at law of Elizabeth Lacey, deceased, one of the children and heirs at [law] of Benjamin Clarke, deceased; Daniel Clarke, Susan Sumall, Thomas Clarke, [and] Mary H. McMillan, heirs of Benjamin Clarke, deceased; Jonathan Rose, Benjamin Umstead, Robert Taylor, Robert Taylor, jr., John D. Taylor, Eliza Sandridge, and William Drake, heirs and representatives of Abraham Drake, deceased, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the Capitol, in Frankfort, on the twelfth day of our present May term, to answer a cross bill with its amendment, exhibited against them in our said court; and have then there this writ.

In testimony whereof John Marshall, chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this twelfth day of May, A. D. eighteen hundred and thirty-five, and in the fifty-ninth year of our independence.

[SEAL.]

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The above spa. not taken out of the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year eighteen hundred and thirty-five, came the complainants, by counsel, and on his motion leave is given to file an amendment to his cross bill, which is done accordingly.

Which amendment is as follows, to wit:

Amendment to cross bill.

To the honorable the judges of the circuit [court] of United States, your orator, Ambrose Walden, a citizen of Virginia, humbly complaining, sheweth unto your honors, by way of amendment to his cross bill heretofore filed in this court against Henry Bodley and others, that, on the 25th day of November last past, in open court, your orator filed his cross bill, to which reference is made, and to which cross bill this is prayed to be an amendment. That previous to the cases referred to in the cross , being agreed to be set for hearing, they were agreed to be set by and between the agent of your orator and the said Thomas Bodley, who then had not only an interest, but who had always acted and conducted the suits for the other parties so far as they held under said Bodley and Pogue. The bill filed was not only with his agency, but is in his handwriting, and wholly written by him, and signed and sworn to; that after the said Bodley had for himself and Pogue and others instituted the various suits referred to, or some time pending the controversy, the said Bodley as agent and attorney entered into an agreement with your orator's then counsel, Sol. P. Sharpe, that the new ejectments brought by your orator to obtain judgments for parts of the tenements which Bodley and Pogue had, pending their injunctions, taken possession of, as well as to obtain new judgments for the possession of so much land as he had theretofore obtained judgments for, and on which judgments, owing to the various injunctions of said [ ] had become inoperative by reason of the expiration of the fictitious leases and the decision of this court, on his motion to extend the leases should be discontinued, and that the whole contest for possession should abide by and be settled by the ultimate determination of the new right by this court, as a court of equity, upon the bills in equity filed. That in pursuance of this agreement thus made for the convenience of all the parties concerned, and to save unnecessary waste of time and expense, the parties, by their counsel, and in open court, entered their agreement, that said action of ejectments should be discontinued, which, with the assent of the court, was made matter of record.

Your orator states, that he only believes, and so charges, that some written memorandum in writing, of the agreement on the part of defendants, through their agent and counsel, Sharpe, expressive of their agreement that no *no* more suits at law should be brought or carried on to obtain judgments to save the right of entry of your orator; but that Bodley, Pogue, and the defendants would surrender, at the final determinations, the possession of all the land not decreed to them, to your orator, was duly signed by the parties, or their attorney; but, owing to

the death of said Sharpe and Bodley, or other causes, your orator's present counsel cannot find such paper. But the agreement is recollected by the clerk, and your orator hopes to prove it by other witnesses.

Your orator states that, after the death of Col. Sharpe, R. Wickliffe was employed to represent him in his suit, who, being advised of the friendly standings which such agreement had given the controversy, entered into the further agreement with said Bodley, who still continued to act as agent for the parties, to allow all the suits in chancery to come on together, and that the depositions, &c., so far as they apply, should be used and read in each and every case; which agreement was also filed, and he supposes appears of record. Your orator's agent made the further agreement with said Bodley, that notices to survey or take depositions, &c., might be served on Bodley or Pogue, and for the defendants on Edward Blackburn, esq., said agent; and a further agreement that the papers of Taylor and Bodley, &c., should be used, &c.; of which agreements the defendants have had the full benefit, and without which they were not ready for trial, and could not, without great cost and trouble, have prepared for trial; that, after these agreements were made, said Thomas Bodley, deceased, and Robert Pogue, came into court, and made oath, or a verbal statement, that the management of the suits had been confided to Thos. Bodley, whose death had rendered his attention necessary, and obtained a continuance of the cause until his death; that, after his death, the cause or causes have revived, and brought on for trial, and an interlocutory decree entered, a survey being made agreeably to said decree, the heirs of said Pogue, or a part of them, came forward, filed their petition, &c., and obtained a further continuance of the cause, with leave to take depositions, &c.; which, being returned into court, the cause came on at term of this court for final decree, when the court gave a decree or decrees, settling the manner of surveying the respective claims, and directed the counsel of the parties to prepare a written decree, which was prepared by the counsel of your orator, and submitted to the counsel of the demises in the suits, who not objecting, the decree was handed to the clerk, and entered by him with the understanding that it had been approved by the counsel of both parties; but, upon the reading of the decree by the clerk, in the orders at a subsequent day, one of the members of the court announced to the counsel of the parties that the decree could not remain as the opinion of the court, but it could stand by consent of the parties, if so entered. The complainant's counsel, J. Haggin, esq., who represented Bodley's heirs, Pogue's heirs, &c., declining to give his consent entered, the decree was set aside; whereupon the counsel of Walden prepared answers and a cross bill to and in the several suits, and, with his petition, presented them to the court; but the court refused to allow the answers to be filed, permitting the cross bill to be filed as a matter of right. After the decree was set aside, as above stated, the court (the district judge only sitting after the circuit judge had left) stated that the cause was not fully prepared for hearing, owing to a deficiency of parties, or of proofs; whereupon the counsel of both parties, with a

view to have the cause finally heard and disposed of by his honor, entered into an agreement, which is received, and the cause was submitted by them to his honor, upon which the counsel of both parties left; decree was afterwards rendered by him, on the 1st day of December, eighteen hundred and thirty-four; and, on the next day, December the second, eighteen hundred and thirty-four, being the last day of the term, a further order of the court was made, suspending the issuing of writs of possession upon the judgments at law, for reasons which are stated in the same order, which, together with all the other orders and entries in the cause, are there referred to and made part hereof; all which will appear upon the records, papers, and proceedings referred, and which are prayed to be taken as a part of this bill.

Your orator further states that, at the present term, the defendants, Pogues, for and in the name of Jno. N. Proctor and Thomas Blair, by the counsel of said Pogue, have moved your honors for a rule on your orator to show cause why the orders made, allowing him to extend the demises, as far as they are concerned shall not be rescinded and held for naught; which motion is now pending before the court, and your orator apprehends that like motions will be made for others of the defendants in the ejectments, or those holding under them and Bodley and Pogue, for every inch of the land adjudged to your orator by the decree; so that as your orator fears, and has just grounds to apprehend, that he will, owing to the long protracted controversy in this court as a court of equity, without any fault of his, be deprived of his property against conscience and equity; the object of the said Bodley's heirs and Pogue, particularly the latter, being to avail themselves of the lapse of time which has intervened since they enjoined and restrained your orator in this court from making his entry at law, in any new actions at law which he may bring; which defence your orator fears will avail at law against conscience and equity.

Your orator further states, that the said Bodley & Pogue have, under their decree in the Fleming circuit court, and otherwise as he is advised and charges, entered up the greater part, if not the whole land decreed to your orator as aforesaid, availing themselves of the said decree, and the injunctions granted them in this court; and they, and those claiming under them, refuse to render to your orator possession, but intend by all ways and means to withhold the same, and every part thereof; your orator is unable to set out the various persons claiming under Bodley & Pogue, nor whether they hold by deeds, or as tenants, or otherwise; but he states them to be numerous, and that it will require a multiplicity of suits at law, if such suits are available at all, to recover the possession, and to have the rents, issues, finally adjusted, and that no remedy known to the law will finally close such controversy; for that, when he shall be, if ever, permitted to do so, issue his writs of possession at law, he fears and has just grounds to apprehend, that the title will be assailed and his possession disturbed by actions of ejectment on other actions at law by the defendants, so that he can neither have justice or peace, unless justice and peace are decided here in this court.

Your orator charges that the rents and profits of his land are considerable, and have been for more than a quarter of a century wrongfully withheld from him, and taken to large amounts by the defendants, and every of them. Your orator prays that the defendants may answer this amended bill, as well as his original cross bill; but especially that the defendants, Pogue & Bodley, may set out and state how they hold or claim the land decreed to your orator, and to whom have they sold, to whom have they leased them, and that the rents, issues, and profits of the land, as to all and every defendant, and as to every person holding under them, may be ascertained and decreed to your orator, as well as the possession of the entire tract as decreed and allotted to your orator; and to that purpose should any part of the former orders, judgments, or decrees need revision, that they may be so amended as to effect equity and justice as to possession, *writs*, issues, and profits; and should the decree settling the rights of the parties be deemed final, then that they as to that decree may be considered a bill of REVIVOR, so far as to *correct* the *error* in said decree manifest upon its face, (to wit,) in not decreeing mutual accounts and charges, and a mutual surrender of the possession, as to the parts allotted to the either party, plaintiff and defendant. And your orator prays your honor, the premises considered, to grant him the proper relief and he will ever pray, &c.

WICKLIFFE, *for Complainant*

On which amended cross [bill], the following spa. was issued, to wit:

Spa. on amended cross bill.

[SEAL.] The United States of America, to the marshal of the district of Kentucky, greeting:

You are hereby commanded to summon Harry J. Bodley, Wm. S. Bodley, Hugh S. Bodley, William H. Hurst and Ann J., his wife, late Ann J. Bodley, Edmund B. Church and Maria J., his wife, late *Mary* J. Bodley, John F. Bodley, Catharine E. Bodley, Thomas Bodley, C. S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives, of Thomas Bodley, deceased; James Pogue, John Pogue, Lindsey Pogue, Edwin Pogue, Robert Pogue, Samuel Garrison, and William Andrew Mackey, heirs and representatives of Robert Pogue, deceased; John Patton and Nancy Patton, his wife, Jas. Campbell and Mary Campbell, *and Mary Campbell*, his wife, James Lindsey, and Nancy Lindsey, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan; and Judith Lacey, Susan Lacey, Thomas Lacey, Chas. Lacey, Walter Lacey, and Daniel Lacey, (children and heirs at law of Elizabeth Lacey, deceased, one of the children and heirs at law of Benjamin Clarke, deceased,) Daniel Clarke, Susan Sumrall, Thomas Clarke, Mary H. McMillan, heirs of Benjamin Clark, deceased; Jonathan Rose, Benjamin Umstead, Robert Taylor, Robert Taylor, jr., John D. Taylor, Eliza

Sandridge, and William Drake, heirs and representatives of Abraham Drake, deceased, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at Frankfort, on the first Monday in August next, to answer a cross bill, with its amendment, exhibited against them by Ambrose Walden, a citizen of the State of Virginia, in our said court, and have then there this writ.

In testimony whereof John Marshall, chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this fourth day of June, A. D. eighteen hundred and thirty-five, and in the fifty-ninth year of our independence. Attest: JNO. H. HANNA, *C. C. C. K. D.*

On which spa. the marshal made the following return, to wit:

This spa. in chancery was not served on the following persons, they having departed this life, viz: Hugh S. Bodley, James Lindsey, Nancy Lindsey, Alfred Duncan, Mary H. McMillan, and William Drake; nor on the following persons, they having removed from this district, or being now out of it and not found, viz: William H. Hurst, Ann J. Hurst, Edward B. Church, Maria J. Church, John F. Bodley, Catherine E. Bodley, John Patton, Nancy Patton, James and Mary Campbell, Henderson, William, Mitchell, Jane, Martha, and Benjamin Duncan, Elizabeth Riggs, late Duncan, Jonathan Rose, and John D. Taylor. Executed on the following defendants, viz: William S. Bodley, twenty-sixth June, Mrs. Catharine H. Bodley, Harry J., Thomas, C. S. F., George W. J., and Ellen P. Bodley, twenty-sixth June; Joseph and Jane Duncan, Wm. A. Mackey, Chas. Lacey, Daniel and Thomas Clarke, Robert Taylor, 8th July; Edwin Pogue, Samuel and Ann Garrison, Susan Sumrall, Benjamin Umpstead, Larkin and Eliza Sandridge, and Robert Taylor, jr., ninth July; on Wilson Boyd and Susan, his wife, late Susan Lacey, twenty-seventh July; and on John and Lindsey Pogue, July twenty-ninth; no such person as Jane Pogue, known or found; Walter and Daniel Lacey, Robert Pogue, Thomas Lacey, and Judith Whitaker, late Lacey, not found.

JNO. M. McCALLA, *M. K. D.*

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, the following order was made herein, to wit:

On motion of the complainant, leave is given him to amend his bill and make new parties, *parties*, which is done accordingly.

Amended bill to cross bill.

To the honorable the judges of the circuit court of the United States, Ambrose Walden respectfully sheweth, by way of amendment to his cross bill, that he has discovered, since he filed his said cross bill against the heirs of Robert Pogue and Thomas Bodley, that the said Robert Pogue, or Pogue and Bodley, have put into possession of parcels of the land in contest, and referred to in the bill, the following persons, who either claim by deeds or by executory contracts, and which lie within

your orator's elder patent and special entry, to wit, James Tebbs, William Jones, and Phillip Palmer, who are occupying it under the said Pogue, &c. Your orator prays that they also be made defendants in this suit, and that process issue, and the defendants may full answer make, full and true answer, &c., to the original and amended bills, in as full and perfect a manner as if the same were repeated by way of interrogatories, and on the hearing, the proper decree be entered in favor of your orator, as against the last named defendants, as the other defendants.

WICKLIFFE.

Upon which amended cross bill, the following als. spa. issued, to wit:

Als. spa. on amended cross bill.

The United States of America, to the marshal of the district of Kentucky, greeting:

You are hereby commanded to summon H. J. Bodley, Wm. L. Bodley, Hugh S. Bodley, Wm. H. Hurst and Ann J., his wife, late Ann J. Bodley, Edmund B. Church and Maria J, his wife, late *Mary J. Bodley*, John F. Bodley, Catharine E. Bodley, Thomas Bodley, C. S. F. Bodley, Ellen P. Bodley, Geo. W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives, of Thos. Bodley, deceased; James Pogue, John Pogue, Lindsay Pogue, Edwin Pogue, Robert Pogue, Samuel Garrison, and Wm. Adw. Mackey, heirs and representatives of Henry Pogue, deceased; Jno. Patton and Nancy Patton, his wife, James Campbell, and Mary Campbell, James Lindsay and Nancy Lindsay, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, Wm. Duncan, Jane Duncan, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan; and Judith Lacey, Susan Lacey, Thomas Lacey, Chas. Lacey, Walter Lacey, and Daniel Lacey, children and heirs at law of Elizabeth Lacey, deceased, one of the children and heirs at law of Benjamin Clarke, deceased; Daniel Clarke, Susan Sumrall, Thomas Clarke, Mary H. McMillan, heirs of Benjamin Clarke, deceased; Jonathan Rose, Benjamin Umstead, Robert Taylor, Robert Taylor, jr., John D. Taylor, Eliza Sandridge, and Wm. Drake, heirs and representatives of Abraham Drake, deceased, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at Frankfort, on the first Monday in December next, to answer a cross bill, with its amendment, exhibited against them by Ambrose Walden, a citizen of the State of Virginia, in our said court, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 12th day of November, A. D. eighteen hundred and thirty-five, and in the sixtieth year of our independence.

[SEAL.]

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This spa. by direction of R. Wickliffe, esq., to be served on Catherine E. Bodley only.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

On which the marshal made the following return, to wit:

Executed November fourteenth, eighteen hundred and thirty-five.

JNO. M. McCALLA, *M. K. D.*

And afterwards, to wit, on the twenty-seventh day of November, the following spa. was issued, to wit:

Subpœna.

The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon James Tibbs, William Jones, and Phillip Palmer, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the Capitol, in Frankfort, on the first Monday in May next, to answer a bill in chancery, exhibited against them and others by Ambrose Walden, a citizen of the State of Virginia, and this they shall in no wise omit under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof Joseph Story, esq., associate justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this twenty-seventh day of November, A. D. eighteen hundred and thirty-five, and in the sixtieth year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

On which subpœna the marshal made the following return, to wit:

Executed on defendants, February first, eighteen hundred and thirty-six. JNO. J. JONES, *D. M. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year eighteen hundred and thirty-six, until which time this cause was continued on the rules, the following order was made herein, to wit:

Henry J. Bodley appointed guardian ad litem, and leave to file amended bill.

On motion of the complainant's counsel, Harry J. Bodley is appointed guardian ad litem, for and on behalf of Elizabeth C. Bodley, Thomas Bodley, Charles T. Bodley, and Ellen G. Bodley, and George Bodley.

And on the further motion of said complainants, leave is given them to amend their bill, to be filed hereafter at the rules.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on the 9th of June, came complainants by counsel, and filed the following amended bill, to wit:

Amended bill.

To the honorable the judges of the circuit court of the United States, for the district of Kentucky, in chancery sitting:

Ambrose Walden, a citizen of Virginia, in addition to what he has before stated, would allege that said Bodley and Pogue with a view to cheat and defraud your orator, instituted a suit in the Fleming circuit court against him, well knowing of the judgments at law, and that title,

if any, of the land lay in that county; and he is informed and believes the land in dispute lies wholly in the county of Mason, and no part of it whatever in Fleming county. But that being a court least likely to be resorted to by your orator, by which he could get information of such suit being depending, was selected as the theatre of their fraud. That the better to keep them off his ground they filed their first, second, and third bills, and continued to harass and vex this party in this court in the manner heretofore alleged, now appearing from the records and proceedings referred to in his original bill and amended bills.

Your orator charges that the defendants, Rose and Shockey, and other defendants, fraudulently, and with a view to deprive your orator of his possession and right, made fraudulent contracts with Bodley and Pogue, to hold under them, contrary to good faith, and their duty as tenants of your orator; he states that since the pending of his bills, and the order enjoining your orator from suing out his writs of possession, he has discovered that Pogue has conveyed to one Fitzgerald, and he to one Blair, who is now in the possession of the land held by the defendant, who is now in possession; and as they are informed and believe, Pogue conveyed to Bodley, and he sold to , the land held at the time of the bringing of the ejectments; but as these deeds and contracts are not in the possession or power of your orator, he cannot file them; that the defendants heretofore made, held, and claim to hold under Pogue, or Pogue and Bodley, land as parts of the land within the entry and patent of your orator, as decreed to be surveyed, and to which Pogue and Bodley are decreed to have no equity. That the said Pogues, the defendants, in right of their father, claim to hold or to be in possession of parts of the said land, but what parts your orator cannot find out, nor can he find out what each tenant claims, or the particular manner of his deriving possession.

Your orator charges that, *that* the conduct of Bodley and Pogue, and their confederates, was fraudulent and oppressive, in first seducing his tenants to atone to them; and secondly, in the various shifts and contrivances they have resorted to, to procrastinate and prevent the fair execution of the judgments at law before referred to; thirdly, in carrying on suits, and without his knowledge the suit in Fleming, at the same time that he was prosecuting the suits as aforesaid in this court; "*fourth*," after obtaining such false and *surreptitious* decree, in obtaining a deed thereon; and fifth, in entering under such deed, and seating and possessing themselves of the land embraced in it, and selling out to others; but as most of their transactions from their date are locked up*on* in the knowledge and breasts of these defendants, your orator cannot know the frauds well without a discovery on oath from the defendants; and their said fraudulent decrees, until even this time, they are now ready and intend, or their tenants, whether at will or otherwise, intend to set up the statute of limitations to any suit at law that may be brought against them for the possession.

Your orator further states, by the order aforesaid, this court has not only enjoined and restrained, but now restrains, your orator from taking

possession of his land, and the defendants have also obtained from this court an order appointing commissioners to assess the value of improvements made on the land, with a view to charge your orator therefor, with the full and avowed intention to hold possession of every acre of your orator's land, and to rely upon every legal advantage which the law and their cunning has or will give them. Your orator states that he is of great age, and lives at a great distance from Kentucky, in the State of Virginia; that he has been in the almost constant pursuit of his rights for nearly half of a century before he could bring the defendants to trial, and had hoped that then his expenses and trouble would end, and he at least get what is decreed him; but by the orders of this court he is further enjoined and is persecuted further by the defendants for pay for improvements which defendants have made in their own wrong, and against the consent of your orator.

Your orator makes the order enjoining of him, as well as the whole of the records and judgments at law, and all the proceedings in chancery, part of this amendment; he also makes the bill obtained by the defendants, Proctor and Blair, and the judgments thereon, also the orders of this court and the proceedings thereon, part of this bill. Your orators therefore pray, that the defendants, and each of them, residing on the land, but especially the defendants Bodley and Pogue, and the defendants who claim under them, as well as those who do not, may each set out and say under whom do they hold, and under what kind of title, set out and say especially, and file their title, bond, or papers.

Your orator further states, that a certain Jno. W. Proctor and Blair, who are made defendants hereto, are settled or living on the land, pretending to hold in some way under Bodley and Pogue, or some of them, a part of your orator's said lands; that they severally pretending to derive title from said Bodley and Pogue, obtained rules on your orator to show cause why the order extending the demises should not be set aside, alleging that they, or one of them, had obtained a deed from Pogue after he and Bodley obtained a deed on his decree against your orator; that that rule was discharged at this term on a division of the court, the district judge being of an opinion in favor of the rule, and the circuit judge against it; but they still contest the right of possession, and refuse to yield to the force and effect of the judgments rendered and enjoined by Bodley and others; your orator also states, that said Bodley and Pogue, or one of them, during the continuance of their different injunctions and suits against him, fraudulently insinuated themselves and co-defendants under them, in parts of his land that was in woods when he brought his ejectments, and the possession to which was uncontested, and holding your orator out by injunction on the said order, appointing commissioners to value improvements, made a part of this amendment and the original bill. Your orators pray that the amendment may be considered in nature of a cross bill to the claim of the *complts.* set up for improvements, as well as an original bill for the recovery of possession of all the lands of which court has decreed to him the superior equity; and that the said Bodley and others, before they are quieted in their

possession, or put into possession, shall yield up what in equity they ought to, of your orator's land.

Your orators pray, that after a full and true account of the rents and profits shall be made, that a decree shall be rendered against the occupants respectively, for what shall be justly due your orator; and to enable the court to do so, he prays that each defendant may distinctly say and set forth in his answer how much land he claims, how much of it is arable, and how long has he or those he claims under had the possession, that each may say when they first settled, and by whom and when the places they claim or reside on was first settled, as well as under whom or by whose authority; and your orator further prays, that the deed made to Bodley and Pogue, under the decree of the circuit [court] of Fleming county, may be decreed to be surrendered, as well as all and every deed made by Bodley and Pogue, or either of them, while they claim to hold your orator's title under such deed, and the possession of the lands embraced in such deeds decreed to be surrendered, that your orators may have peace. He prays relief, &c., &c.

WICKLIFFE.

On which the following spa. issued, to wit:

Spa. on amended bill.

The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Thomas Blair and John N. Proctor, citizens of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the Capitol, in Frankfort, on the first Monday in November next, to answer original and amended bills in chancery exhibited against them and Bodley's heirs, &c., in our said court, by Ambiose Walden, a citizen of the State of Virginia; and this they shall in no wise omit under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to [be] hereunto affixed, this eighth [L. S.] day of June, A. D. eighteen hundred and thirty-six, and in the sixtieth year of our independence.

Attest: JNO. HANNA, *C. C. C. K. D.*

On which the marshal made the following return, to wit:

Executed on J. N. Proctor, August second, eighteen hundred and thirty-six.

THOS. SMITH, Jr., *D. M.*
For JNO. M. McCALLA, *M. D. K.*

And afterwards, to wit, at rules held in the clerk's office of the eighth circuit court of the United States, and for the Kentucky district, on the 1st Monday in June, and year 1837, until which time this cause was continued, came James Tebbs, &c., and filed the following answer, to wit:

Answer—Jas. Tebbs and others.

The joint and several answers of James Tebbs, Thomas Blair, William Jones, Philip Palmer, to a cross bill, amended cross bill, and bill purporting [to be] an answer, cross bill, and bill of revivor, &c., filed against them and others in the United States circuit court, Kentucky district, by Ambrose Walden. These defendants, saving and reserving to themselves all and every manner of exception to the many errors, uncertainties, and imperfections in said bill, for answer to so much thereof as they are advised it is material or necessary for them to answer, answer and say, that they know nothing whatever of any agreement, as charged in the bill, between the complainant or his counsel and Bodley, or any other person whatsoever, by which it was agreed that the common law suits should be dismissed or discontinued, and the whole title to the land settled and adjudicated in the chancery suits, or of the existence of any agreement, either written or *pural*, touching the same, or of any agreement whatever by which the complainant was thrown off his guard, or induced to suspend or discard any common law right, remedy, or privilege, he ever had, or was entitled to in the premises; nor are they aware, that if Bodley ever did make such agreement, that he had any power or authority to bind any person thereby except himself. These defendants being thus ignorant touching the same, deny that any such agreement was made, and that any authority to make the same existed in the said Bodley. These defendants were not parties to the suits in chancery referred to by the complainants, and have no personal knowledge of what took place in the same, except so far as the same appears of record; and they therefore refer to the records as containing the only knowledge they possess, and call upon the complainant for full proof of all the allegations of his bill which are not sustained by the records. These defendants are advised, by their counsel, that there were periods in the progress of the causes, as will appear by the inspection of the same, during which the complainant might have taken out execution on his common law judgments, if at common law he was entitled to the same, and that the difficulties in which he complains to be now involved have been produced by the ignorance or inattention of the original counsel of the complainant, and the supineness of the complainant. They are moreover advised, by their counsel, that the judgment at law referred to as having been recovered in ejectment, *were* never valid or valuable for the complainant, because the demise in each had expired before his judgments were obtained, &c., and for other reasons, which will be apparent upon the said records which are referred to; and that the orders, by which the demises were afterwards extended, were void and ineffectual, as they were ex post orders, made without notice to Pogue, Bodley, or any of the persons in the possession of the land, or claiming title or possession to the same, or to either of the defendants, or any persons under whom they claim or derive title; and that if notice had been given of such intended motions to extend said demises, said motions could and would have been successfully resisted; under the advice of their counsel they make these charges, and rely on

the same. They deny all fraud and fraudulent collusion, and say that the land which they respectively hold and claim was received and obtained by them in good faith, and without any collusion with any person to defraud, or harass, or injure the complainant, and without any surreptitious movement or act whatever. These defendants, jointly and severally, insist, that if the complainant has any remedy it is in a court of law; and they pray the judgment of this court whether they ought to be called on to answer, or be impleaded in this court. They are also advised by counsel that the decree rendered by this court in the original bill of the complainant Walden is a bar to the matters and things set up in the cross bill and amendments which they are called to answer, and they read and rely upon that decree in bar of the cross bill and amendments. The defendant Thomas Blair also severally answers and says, that he knows very little of the origin and history of his title, as he made his purchase under the full and conviction that those from whom he bought had a perfect title to the same, and could vest him with a secure title thereto, and that he knew nothing whatever of Walden's claim until after he made his purchase; that before that he had never heard of Walden's claim, and that he was and is an innocent purchaser for a valuable consideration. He states that he is now in the possession of about sixty-five or sixty-six acres of the land reputed to be within Walden's patents; that he obtained possession of fifty acres of the same in April, 1832, and of the remainder in September, eighteen hundred and thirty-three. Of the fifty acres, about sixteen was wood land when he took possession, and about 18 not arable or fit for cultivation, and the rest arable. Of the remaining fifteen or sixteen acres, about one-half thereof is in woods, and the whole of the fifteen or sixteen acres is so situated and cut up by the bed of a creek that it is unfit for cultivation.

This respondent holds and claims the last mentioned fifteen or sixteen acres under Robert Pogue, having purchased the same from him in September, eighteen hundred and thirty-three; and he is informed, and charges, that Walden sold the same more than forty years ago to A. Chapin, who then paid him for the same, and that A. Chapin, or his heirs, sold the same to Robert Pogue, who sold the same to this respondent. In regard to the fifty acres, this respondent charges that he purchased the same of Hambrick in April, eighteen hundred and thirty-two, who was then in possession of the same, claiming and holding it as his own, and to whom Fitzgerald was bound to make a conveyance; and that in consideration of this respondent's purchase, and of his the said Fitzgeral's obligation to convey, the said Fitzgerald and wife did, on the said twentieth day of September, eighteen hundred and thirty-two, convey the same to this respondent, as will more fully appear by an attested copy of said deed herewith filed and made part of this answer, the original being on file in the office in Mason where the land lies; and this respondent has ever since held and retained the said land as his own. This respondent has no personal knowledge whatever of the progress and movement in the various suits referred to, or of the deriva-

tion of Fitzgerald's title; but he is informed, and charges, that after the expiration of the demises in said Walden's declaration, and before the renewal thereof, that said Shockey sold the land in contest to Robert Pogue, who claimed it previously under the patent in the name of Tibbs, &c., for ten thousand acres of land, posterior in date to that of Walden, and adverse thereto; and said Pogue, who purchased, in order to unite the conflicting claims in himself, then took possession of said land in contest, and continued the possession in himself until about the year eighteen hundred and fourteen, when he sold the same to Tilton and Huston, who then entered and held the possession for two or three years, and then sold to Hambrick, who continued in possession until the demise was entered, and until he sold and delivered the possession of the same to your respondent. An attested copy of the deed from Pogue to Fitzgerald, and of Tibbs & Co's patent, will be filed herewith, and prayed to be taken as part of this answer.

This respondent has no knowledge whatever of the manner in which Shockey entered or held the land, and he calls upon the complainant for full proof on that point; nor has he any knowledge of the manner in which those from whom Shockey *held* entered or held, or from whom he or they obtained possession. This respondent states that himself, and those under whom he holds, have had more than twenty years peaceable, and uninterrupted, and adverse possession of the land in controversy before the commencement of this suit; and he pleads, and relies on the same, and the various statutes of limitation, for his protection; and also upon the great lapse of time as a bar to the complainant's demand, in addition to the facts and charges contained in his answer. This defendant denies all fraud, and prays to be hence dismissed with his costs, &c. He states that he, and those under whom he claims, have made large and valuable improvements on the land, and if he loses his land he prays that he may be decreed compensation for the same.

THOMAS BLAIR.

James Tebbs further answers.

The defendant, James Tebbs, further answers and says that he holds about ninety-one acres of land supposed to be within the boundary of Walden's patent; that he claims title to forty-one and one-half acres by intermarriage with Elizabeth Carter, who was the only child and heir at law of Dale Carter, deceased; the whole of said land was in woods when said Dale Carter took possession of the same; and the whole, with the exception of about ten acres, was cleared by said Dale Carter. This respondent expressly charges that this land never was recovered in ejectment by the complainant, as he is informed and believes, and was never in the possession of Craig, Kenton, Shockey, Rose, or any of the defendants to Walden's ejectments, but was the land of Robert Pogue and Bodleys, held and claimed by them under Tebbs, &c., ten thousand acre patent. That Pogue and Bodley took possession of the same thirty or forty years ago, and held the possession thereof until the same

was sold by them to Dale Carter; and that Pogue and Carter, and this respondent, have always held it in their own right, and adverse to the claim of Walden and all others. That in April, *eight* eighteen hundred and fifteen, Dale Carter purchased, and took possession of, the same of Bodley and Pogue, and received a deed from them in eighteen hundred and twenty-five, a copy of which deed is herewith filed and made part of this answer; the said Dale having paid them the purchase money for the same at the time he took possession of the land. This respondent denies that possession of the land was fraudulently and surreptitiously taken; but he charges and avers that said Dale Carter was an innocent purchaser for a valuable consideration, without notice of Walden's claim. This respondent claims title to the other fifty-one acres and seventy-one poles, as a purchaser of the same, for a valuable consideration, from Bodley and Pogue in April, eighteen hundred and twenty-five, at which time he paid the whole of the purchase money to Robert Pogue, and received possession thereof from him; and afterwards, in August, eighteen hundred and twenty-five, received Bodley and Pogue's deed for the same, a copy of which is made part hereof. This respondent charges that no portion of this land was ever in the possession of Rose, Craig, Kenton, or any of the defendants to Walden's ejectment; and that Walden never recovered any part of the same in ejectment, that Bodley and Pogue had peaceable possession of both the aforesaid tracts of land for more than twenty years before the commencement of this suit in chancery, holding and claiming the same during the whole of that period as their own, and adverse to the claim of Walden. The whole of this last tract was wood land at the time of this respondent's purchase, and since that time he has gradually cleared about ten acres, which is now arable. This respondent has made large and valuable improvements on the above tracts, and if the land is taken from him, he prays that he may have full payment for the same.

This respondent states, that he was a valuable purchaser without notice of Walden's claim to the land, and that he knows nothing of the various suits concerning any portion of his, Walden's, claim, except so far as they appear of record, he not being a party to the same, and having nothing to do with them until he was made a party by the present bill of the complainant. This respondent denies all fraud and contrivance, and calls upon the complainant for full proof of every allegation which he has not admitted. He also pleads and relies upon the various statutes of limitation in his behalf and for his protection, and the lapse of time in bar of the complainant's supposed equity, and denies all fraud, and prays to be hence dismissed, with his costs.

JAMES TEBBS.

Wm. Jones further answers.

The defendant, William Jones, further answers, and says: He is in possession of ninety-nine acres and one half of land in the county of Mason, and which is reputed to be in the boundary of Walden's patents that no part whatever of the same was ever recovered in the ejectments

of Walden, nor was the same ever in the possession of any of the defendants to said action of ejectment; that the whole of the same was in the adverse possession of Bodley and Pogue and Hughes for some time before the Cashes took possession of the same, and that they claimed to hold it as their own under Tebbs & Co's patent for ten thousand acres. That Bodley, Pogue, and Hughes sold to John and Thomas Cash sixty-two acres of the same, for a full and valuable consideration paid to them, in eighteen hundred and seven, and placed them in possession of the same, and executed to them a deed therefor in eighteen hundred and seven, an attested copy of which deed is here referred to and made a part of this answer, and which deed being for one hundred and thirty-two acres, covers the whole of the said sixty-two acres; that the said Cashes took possession of the same, and held it as their own until the death of John Cash, when his heirs took possession of the same, and sold the same to this respondent about the 17th November, eighteen hundred and thirty-one, when the heirs of the said John made to this respondent, for a valuable consideration, a deed for the same, which deed, or an attested copy of the same, is made part hereof; a division having previously been made between the two Cashes, by which the part sold to this respondent fell to the heirs of John Cash; of the said tract about fifty acres was arable when this respondent purchased; the said Cashes likewise purchased the whole of the land held as above described by this respondent of Bodley & Pogue, for a valuable consideration, about the year 1820; the said Bodley & Pogue having had possession of the same for many years before, and claiming it as their own under the patent of Tibbs, &c., of ten thousand [acres,] and adverse to the claim of Walden and all others; and this respondent purchased the same from the said heirs of Cash about the year eighteen hundred and thirty-one, and paid these heirs a full and valuable consideration for the same, and received their deed for the same, which [deed,] or an attested copy whereof, will be herewith filed and made part of this answer. This respondent states that the whole of the last tract is wood land, and was so at the time he purchased. This respondent especially charges that the said Bodley, Pogue, Hughes, and the Cashes, and this respondent, held and enjoyed the continued and uninterrupted and peaceable possession of the whole of the aforesaid land from the time it was taken possession of by Pogue, &c., up to this day, and for more than twenty years before the commencement of this suit, claiming and holding the same adversely to Walden and all others; and this respondent expressly states, that neither himself nor the Cashes had any knowledge of said Walden's pretended claim, and both he and they were innocent purchasers, for a valuable consideration. This respondent denies that possession was surreptitiously taken of the land as charged in the bill; he has no personal knowledge of the suits referred to in the bill, as he was not a party thereto, and had nothing to do with the same. He states that Cash made large improvements, and of a valuable character, on the same; and he hoped that if his land is taken from him, he may have payment for the same. He denies all

fraud and fraudulent combination, and relies and pleads his long continued possession, and that of those under whom he claims, and the several statutes of limitation in bar of the complainant's claim, and also the great lapse of time, &c., and prays to be hence dismissed, with his costs. He calls upon the complainant for full proof of all the allegations of his bill which he has not admitted.

WILLIAM JONES.

P. Palmer further answers.

The defendant, Philip Palmer, further answers, and says: That he is in possession of about thirty-five acres of land reputed to be within Walden's patent boundary; that no part of the same was recovered by Walden in his action of ejectment, nor was any part of the same ever in the possession of any of the defendants to said ejectment. He states that Bodley, Pogue, and Hughes were in the adverse possession of the same previous to their sale to John and Thomas Cash, and at the time of said sale, and that in eighteen hundred and seven, they sold the same to John and Thomas Cash for a valuable consideration, and made them a deed therefor, which is herewith, or rather an attested copy thereof, and prayed to be taken as a part of this answer, and that the said deed for one hundred and twenty-two acres covers the same. That the said John and Thomas Cash resided on the land until the time of their death, and that on a division between their heirs, the part held by this respondent fell to the heirs of Thomas; and that, for a valuable consideration, this respondent purchased the same of the heirs of Thomas Cash in eighteen hundred and thirty-one, and received their deed for the same, of which an attested copy is herewith filed, and prayed to be taken as part of this answer. He states that he was no party to the suits referred to in complainant's bill, and took no part in relation to the same; that he was and is an innocent purchaser, for a valuable consideration, being ignorant of Walden's claim, as did likewise the Cashes, and purchasing as he supposed a clear and indefeasible title to the land. That from the time Bodley, Hughes, and Pogue took possession of the land, it has been held in the continued and uninterrupted and peaceable possession of them and the Cashes, and of this respondent, for more than twenty years before the commencement of this suit, and that said possession was adverse to said Walden and all others; and he pleads and relies on said possession and the statutes of limitation, and the lapse of time in bar of the complainant's suit. He states that when he purchased the said tract, about one half of the same was arable, and that he has since from time to time cleared about six or seven acres. The Cashes put valuable and lasting improvements on the same; and if he loses his land, he prays that he may be entitled to and receive compensation for the same. He denies all fraud and unlawful combination, and denies that possession was taken of the land surreptitiously, and calls on the complainant for full proof of all the allegations which he has not already admitted, and prays to be hence dismissed, with his costs.

PHILIP PALMER.

FRANKLIN COUNTY, *and State of Kentucky, sct:*

This day the above named Philip Palmer, William Jones, Thomas Blair and James Tibbs, whose names are subscribed to the foregoing answer, personally appeared before the undersigned, one of the justices of the peace for said county, and this day severally made oath that the facts set forth and detailed in their foregoing answer are true, so far as they are detailed from their own knowledge, and that so far as they are detailed from the information of others, they are to the best of their knowledge and belief true.

Given under my hand, this fifth November, eighteen hundred and thirty-six

JAMES SHANNON, *J. P.*

And afterwards, to wit, at the rules held in the clerk's office of the court aforesaid, on the first Monday in June, until which [time] this cause was continued, came S. Y. Garrison and wife, and filed the following answer, to wit:

Joint answer of Garrison and wife.

The joint answer of S. Y. Garrison and Ann E., his wife, formerly Pogue, to a cross bill, amended cross bill, and bill purporting to [be] an answered cross bill, and bill of revivor, &c., filed against them and others in the United States circuit court, Kentucky district, by Ambrose Walden. These defendants, saving and reserving to themselves all and every manner of exceptions to the many errors, uncertainties, and imperfections in said bills, for answer to so much thereof as they are advised it is material or necessary for them to answer, answer and say, that they know nothing whatever of any agreement as charged in the bill, between the complainant or his counsel and Bodley, or any other person whatsoever, by which it was agreed that the common law suits should be dismissed or discontinued, and that the whole title to the land settled and adjudicated in the chancery suits, or of the existence of any agreement either written or oral touching the same, or of any agreement whatsoever by which the complainant was thrown off his guard, or induced to suspend or discard any common law right, remedy, or privilege he ever had, or was entitled to, in the premises; nor are they aware that if Bodley ever did make such agreement, that he had any power or authority to bind any person thereby, except himself. These defendants being thus ignorant touching the same, deny that any such agreement was made, or that any authority the same existed in the said Bodley. These defendants were not parties to the suits in chancery, referred to by the complainants, and have no personal knowledge of what took place in the same, except so far as the same appears of record, and they therefore refer to the records as containing the only knowledge they possess, and call upon the complainant for full proof of the allegations of his bill, which are not sustained by the record. These defendants are advised by their counsel, that there were periods

in the progress of the causes, as will appear by the inspection the same, during which the complainant might have taken out execution on his common law judgments, if at common law he was entitled to the same, and that the difficulties in which he complains to be now involved, have been produced by the ignorance or inattention of the original counsel of the complainant, and the supineness of the complainant.

They are moreover advised by their counsel, that the judgments at law referred to as having been recovered in ejectment, were never valid or available for the complainant, because the demise in each had expired before his judgments were obtained, &c., and for other reasons which will be apparent upon the said records which are referred to; and the orders by which the demises were afterwards extended were void and ineffectual, as *they* ex parte orders were made without notice to Pogue, Bodley, or any of the persons in possession of the land, or claiming title or possession to the same, or to either of these defendants, or any persons under whom they claim or derive title; and that if notice had been given of any such intended motion to extend said demise, said motion could and would have been successfully resisted; under advice of their counsel they make these charges and rely on the same; they deny all fraud and fraudulent collusion, and say that the land which they hold and claim was received and obtained by them in good faith, and without any collusion with any person to defraud, harass, or injure the complainant, and without any surreptitious movement or act whatever. These defendants insist that if the complainant has any remedy, it is in a court of law, and they pray the judgment of this court whether they ought to be called on to answer or to be impleaded in this writ. They are also advised by their counsel that the decree rendered by this court in the original bill of the complainant Walden, is a bar to the matters and things set up in the cross bill and amendments to which they are called to answer, and they plead and rely upon that in bar of the cross bill and amendments; they further answer and say that they never were connected with the record, except so far as they became parties thereto after the death of their father, Robert Pogue, as appears of record, and that they have no personal knowledge whatever of the controversy nor transactions connected therewith, nor upon which the suit was based, except what appears from the records; that they are wholly innocent of any fraud or misconduct whatever on the part of their ancestor and father, or the parties connected with him in the suit; that they have no part of the land in controversy in possession; that all the sales which took place were made before the death of our father, and we have no knowledge of the same except from the records, the decrees whereof are filed among the papers of the cause, and are referred to by their co-defendants.

They deny each and every allegation of the bill, except so far as the said allegations are sustained by the records, with the exception of those they have written. They deny that they have at any time received any rents, issues, or profits of the land; denies all fraud, and prays to be dismissed with his costs, &c.

SAMUEL Y. GARRISON.
ANNE ELIZA GARRISON.

MASON COUNTY, *and State of Kentucky, sct:*

Personally appeared before me, the undersigned, a justice of the peace, in and for said county, Samuel Y. Garrison and Anne E., his wife, late Pogue, and made oath that the statements contained in the foregoing answer are true, so far as they are detailed from their own knowledge, and so far as they are detailed from the information of others they believe them to be true. Given under my hand, this fourth day of May, eighteen hundred and thirty-seven.

JOHN L. KIRKE, *J. P. M. C.*

Pogue, &c., answer.

The joint and several answers of Samuel Y. Garrison and Anne E., his wife, formerly Pogue, William L. Pogue, Edwin P. Pogue, and John N. Proctor, to a cross bill, amended cross bill, and bill purporting to [be] an answer, cross bill, and bill of revivor, &c., filed against them and others, in the United States circuit court, Kentucky district, by Ambrose Walden. These defendants, saving and reserving to themselves all and every manner of exception to the many errors, uncertainties, and imperfections in said bill, for answer to so much thereof as they are advised it is material or necessary for them to answer, answer and say, that they know nothing whatever of any agreement as charged in the bill between the complainant, or his counsel, and Bodley, or any person whatever, by which it was agreed that the common law suits should be dismissed or discontinued, and the whole title to the land settled and adjudicated in the chancery suits, or the existence of any agreement, either written or oral, touching the same, or of any agreement whatever by which the complainant was thrown off his guard, or induced to suspend or discard any common law right, remedy, or privilege he ever had or was entitled to in the premises; nor are they aware that, if Bodley ever did make such agreement, that he had any power or authority to bind any person thereby, except himself.

These defendants, being thus ignorant touching the same, deny that any such agreement was made, and that any authority to make the same existed in the said Bodley. These defendants were not parties to the suits in chancery referred to by the complainant, and have no personal knowledge of what took place in the same, except so far as the same appears of record; and they therefore refer to the records as containing the only knowledge they possess, and call upon the complainant for full proof of the allegations of his bill, which are not sustained by the record.

These defendants are advised by their counsel, that there were periods in the progress of their causes, as will appear by inspection of the same, during which the complainant might have taken out execution on his common law judgments, if at common law he was entitled to the same; and that the difficulties in which he complains to be now involved, have been produced by the ignorance or inattention of the original counsel of the complainant, and the supineness of the complainant. They are moreover advised, by their counsel, that the judgments at law

referred to as having been recovered in ejectment were never valid or available for the complainant, because the demise in each had expired before his judgments were obtained, &c., and for other reasons which will be apparent upon the said records, which are referred to; and that the order by which the demises were afterwards extended were void and ineffectual, as *they* ex parte orders made without notice to Pogue, Bodley, or any of the persons in possession of the land, or claiming title or possession to the same, or to either of these defendants, or any persons under whom they claim or derive title; and that if notice had been given of such intended motions to extend said demises, said motion could and would have been successfully resisted; under the advice of these counsel they make their charges, and rely on the same; they deny all fraud and fraudulent collusion, and say that the land which they respectively hold and claim was received and obtained in good faith by them, and without any collusion with any person to defraud, or harass, or injure the complainant, and without any surreptitious movement or act whatever.

These defendants, jointly and severally, insist that, if the complainant has any remedy, it is in a court of law, and they pray the judgment of this court whether they ought to be called to answer or to be impleaded in this writ. They are also advised by their counsel, that the decree rendered by this court in the original bill of the complainant, Walden, is a bar to the matters and things set up in the cross bill and amendments, to which they are called to answer; and they plead and rely upon that decree in bar of the cross bill and amendments.

The defendant, Edwin Pogue, separately answers and says, that he never was connected with the record, except so far as he became party thereto after the death of his father, as appears of record, and that he has no personal knowledge whatever of the controversy nor transactions connected therewith, nor upon which the suits were based, except what appears from the record; that he is wholly ignorant of any fraud or misconduct whatever on the part of his ancestor and father, or the parties connected with him in the suit. That he has no part of the land in controversy in possession; that all the sales which took place were made before the death of his father, and he has no knowledge of the same, except so far as they appear of record, the deeds whereof are filed among the papers of this cause, and referred to by his co-defendants. He denies each and every allegation of the bill, except so far as the said allegations are sustained by the records, with the exception of those he has admitted; denies that he has at any time received any of the rents, issues, or profits of the land; denies all fraud, and prays to be hence dismissed with his costs, &c.

EDWIN P. POGUE.

STATE OF KENTUCKY,
Franklin county, sct:

Personally appeared before the undersigned, a justice of the peace in and for the county and State aforesaid, the above named Edwin Pogue,

2083.

who this day made oath that the statements contained in the foregoing answer are true, so far as they are detailed from his own knowledge, and that so far as they are detailed from the information of others he believes them to be true.

Given under my hand this first [day of] May, eighteen hundred and thirty-seven.

JAMES SHANNON, *J. P.*

J. N. Proctor's further answer.

The defendant, John N. Proctor, further especially answers and says, that he was no party to the proceedings in chancery or the common law record enjoined thereby, and that he has never been otherwise connected with the suits except so far as appears of record; that he is an innocent purchaser of part of the land, and had about eighty acres of the land in controversy, in possession, at the time he was served with process in this suit; and that his title to the same is truly set forth in his petition to have the order extending the demise set aside; which petition, and the proceedings therein, are referred to and made part of complainant's bill, and which this defendant also, together with the exhibits and vouchers filed therein, incorporates and makes part of this his answer, and he makes the statements and charges thereof part of this his answer. This defendant denies each and every allegation of fraud and misconduct charged in the bill, and all the allegations thereof not matter of record which he has not substantially answered, and prays to be hence dismissed with his costs, &c.

STATE OF KENTUCKY,
Franklin county, sct:

Personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, the above John N. Proctor, and this day made oath that the statements contained in the foregoing bill, so far as they are detailed from his own knowledge, are true, and that he believes them to be true so far as they are detailed from the information of others.

Given under my hand this fourth day of May, eighteen hundred and thirty-seven.

JAMES SHANNON, *J. P.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of January, in the year eighteen hundred and thirty-eight, came the complainants, by their counsel, and for replication to the answers filed, say:

Complainants' replication.

That the matters and things contained in their original cross bill, amended bills, and bills of revivor are true, and the statements made in the said answers, so far as they contradict the allegations of the bill, are untrue, and dedimus are awarded either party.

And afterwards, to wit, at the rules held in the clerk's office of the court aforesaid, in the month of September, and year aforesaid, until

which time this cause was continued on the rules, came the complainants, by their counsel, and gave to the defendants a rule for hearing herein.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of October, and year aforesaid, came the complainant, by his counsel, and set this cause for hearing.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, came the defendants, by their counsel, and on his motion it is ordered that this cause be remanded to the rules. And it is further ordered that said defendants have leave to file an amended answer herein, which was done accordingly. Here follows copy of Bodley's answer:

Answer of Bodley, &c.

The answer of Harry J. Bodley and others, heirs and administrator of Thomas Bodley, deceased, to a bill and amended bill filed against them and others, in the 8th circuit court of the United States for the Kentucky district, by Ambrose Walden:

These respondents, reserving the benefit of all manner of exception, &c., for answer, say, they are wholly ignorant of the matters and things in said bills contained; they resist all the claims of complainant, and require him to prove every fact alleged therein. They rely on lapse of time and the statute of limitation as barring complainant's right to relief. They also say that they claim nothing by descent from their ancestor, Thomas Bodley. They rely that there is no equity in complainant's bill, and that the court has no jurisdiction of the same. They rely on all the defences set up by their co-defendant Pogue, and all defences of all their other co-defendants.

JOHNSON, *for Bodley, &c.*

Accept without oath.

R. WICKLIFFE,
For complainant.

Complainant's replication to Bodley's heirs' answer.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of January, in the year one thousand eight hundred and thirty-nine, came the complainant, by his counsel, and for replication to Bodley's heirs' answer, says that the allegations in his bill are true, and that the statements in the answer, so far as they contradict the statements in the bill, are untrue.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of September, in the year aforesaid, came the complainant, by his counsel, and gave the defendants a rule for hearing herein.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of November and year aforesaid, until which time this cause was continued on the rules, came the complainant, and set this cause for hearing.

And afterwards, to wit, at the November term of the court aforesaid,

and year aforesaid, came Robert Wickliffe, and suggested the death of the complainant, Ambrose Walden, which is not denied; and, on motion of complainant, ordered, that this cause be remanded to the rules.

And afterwards, to wit, at the May term of the court aforesaid, and year one thousand eight hundred and forty-one, the following order was made herein, to wit:

Came Bodley's heirs and Pogue's heirs in the above suits, by their counsel, and on his motion dedimus is awarded either party to take depositions; and on the further motion of said counsel, leave is given the surveyor to amend the surveys filed in the above suits.

Whereupon, it is ordered, that the surveyor of county, do go on the land in controversy in the above suits between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial, and the marshal or one of his deputies, is directed to attend the said survey to remove force, should any be offered.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of January, one thousand eight hundred and forty-two, came the complainants, and filed the following bill of revivor and amended bill herein.

Bill of revivor and amended bill of Walden's heirs.

To the honorable the circuit [judge] of the United States, for the district of Kentucky.

Your orators Richard Walden, William Walden, George Carter and Judith Carter, his wife, &c., heirs &c., of Ambrose Walden, deceased, would state that since the decrees made in the case of Bodley, &c., against *William* Walden, the said *William* Walden has departed this life, leaving your orators his children and heirs at law. Your orators therefore pray that said suits stand revived, and stand in their names as defendants, and that your honors make a decree and order, directing the marshal to put your orators in possession. Your orators state that the whole of the lands to which they are entitled to possession of at this time, is held by the complainants, the heirs of Bodley; the complainants, the heirs of Pogue, and by *H*umpstead, Proctor, and Blair, and other persons alleged in the cross bill to have purchased, and who held or acquired possession since the date of the writs and pendency of the suits. That Rose is dead, but before his death conveyed all his title to Proctor, and his heirs are unknown. That William Drake is dead and his heirs unknown, and your orator believes that they, if they exist, have no claim to the land in contest. That John Pogue and Robert Pogue are dead, but those who survive of the heirs of R. Pogue, own and hold whatever title they ever possessed, and if they have other heirs they are unknown to the complainants; that those returned as no-in-

habitants by the marshal have not, as your orator believes, any interest whatever in the lands in contest.

Your orator makes their cross bill and the petition of Blair and Proctor, and proceedings therein, as well as the bill and proceedings in this case, a part of this bill and answer. Your orators state that the demises have run out, and the defendants withheld the possession, and have been and are committing waste, and have taken the rents, issues, and profits, for which they refuse to account. Your orators pray an account of the rents and of waste, &c., to be taken and be decreed to them agreebly to their prayer, &c., in their cross bill, and they will ever pray. R. WICKLIFFE.

November term, one thousand eight hundred and forty-one.

This eleventh day of November, one thousand eight hundred and forty-one, Robert Wickliffe came into court, and made oath that the statements made in the within bill, so far as relates to his own knowledge, are true, and the statements made from the information of others, he believes to be true.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

The death of E. Pogue suggested.

And afterwards, to wit, at the May term of the court aforesaid, and year one thousand eight hundred and forty-two, came William Ousley, esq., and suggested to the court, that Edwin Pogue, a party to the two foregoing causes, has departed this life, which appeared to the satisfaction of the court, which fact is not denied; and on motion, R. Wickliffe, esq., counsel for Walden's heirs—

Revived in the name of Waldens, &c.

It is ordered that this suit stand, and is hereby revived in the names of Richard Walden, John Carter and Judith, his wife, late Judith , John Walden, and William Walden, children and heirs at law of Ambrose Walden, deceased; also in the names of Harry J. Bodley, Catherine E. Bodley, Charles S. T. Bodley, George W. J. Bodley *and* Catherine H. Bodley, and William S. Bodley, William H. Hurst and Ann, his wife, late Ann J. Bodley, Edmund B. Church and Maria, his wife, Maria J. Bodley, *Catherine E. Bodley*, and John F. Bodley, heirs of Thomas Bodley; and that said suits also stand and be revived in the name of Lindsey Pogue, heir of Robert Pogue, deceased; whereupon this cause is remanded to the rules, and leave is given the defendants to answer supplemental bill, or other matter, at the June rules, and the time for proofs limited to the first day of next term, when the cause may be set for hearing as on the expiration of a commission.

Leave to file bill of revivor vs. Pogue's heirs, and answer heretofore lodged, filed, &c.

And afterwards, to wit, at a subsequent day of the term aforesaid, came the parties by their counsel, and by consent, leave is given Walden's heirs to file a bill of revivor against Pogue's heirs; and the answers of James Tebbs, William Jones, Philip Palmer, and Thomas Blair, heretofore lodged and now filed, and leave is given John N.

Proctor to answer, and this cause is continued on the rules, and leave to both parties to take depositions.

And on the twenty sixth of November, one thousand eight hundred and forty-two, came Benjamin Umstead, and filed his answer herein, to wit:

Answer of Benjamin Umstead.

The answer of Benjamin Umpstead to a bill in chancery exhibited against him in the circuit court of the United States, in and for the district of Kentucky, by heirs of Ambrose Walden and others: The defendant, saving and reserving unto himself all manner of benefit and advantage of exception to said bill, and the matters and things therein contained, for answer says, that in the year one thousand eight hundred and eleven he entered upon and took possession of the tract of land described in and by the deed herewith filed, and made part of this his answer, marked B, having in that year a bond for the conveyance thereof; in the year one thousand eight hundred and eighteen, upon the thirtieth of March, hereby paid for the same, John Johnson, his vendor, gave and executed to him the deed aforesaid; at the time of the purchase he knew nothing as to the *execution* of the claim of the complainants to said lands.

This respondent has understood, and so charges, that the land mentioned in his deed above, as also that purchased by him of John D. Taylor, and Robert Taylor, and L. A. Sandridge, is within Tebbs' 10,000 acre survey and patent, and that he has, and those under whom he claims had, near or quite forty years possession; he requires proof of all and singular the allegations in the bill of the complainant contained, which can or may in any wise affect his interest. And having answered, he prays to be hence dismissed, &c.

STATE OF KENTUCKY, *County of Mason:*

This day personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, Benjamin Umstead, and made oath that what he has stated in the foregoing answer of his own knowledge is true, and that upon the information of others he believes to be true.

Given under my hand this twenty-ninth day of June, one thousand eight hundred and forty-two.

LEROY DOBBINS, *J. P.*

And afterwards, to wit, on the third day of March, one thousand eight hundred and forty-three, came Eli M. Pogue, and filed his answer herein, to wit:

Separate answer of Eli M. Pogue.

The separate answer of Eli M. Pogue, one of the children and heirs of Edwin P. Pogue, to a bill of revivor filed against him, and in the circuit court of the United States, for the district of Kentucky, by Richard Walden, &c., describing themselves as heirs of Ambrose Walden,

deceased. This defendant admits that he is one of the children of his deceased father, Edwin P. Pogue, dec'd; but he states that, of his own knowledge, he knows nothing of the matters and things in contest in the cause sought to be revived, other than what appears by the records and proceedings in said cause. He discovers that his deceased father in his lifetime answered, and to which answer he refers and adopts as part of this answer. He admits whatever is admitted in said answer of his father, and denies whatever is denied in said answer. He cannot admit any thing not admitted in his father's answer, and being ignorant of the matters and alleged, requires that the same may be established by proof. He knows not whether the complainants in the cross bill are, or are not, the heirs of Ambrose Walden, deceased, and requires proof of them thereof. He states that he is the only child of his deceased father that has arrived to the age of 21 years, and that all his other children are infants. And having answered as fully as he is advised is material for him to answer unto, he prays to be hence dismissed with his costs.

ELI M. POGUE,
By OUSLEY & MOREHEAD,
His counsel.

UNITED STATES, *Kentucky district:*

Sworn to before me, at the district aforesaid, this third day of March, one thousand eight hundred and forty-three.

JOHN H. HANNA, *C. K. D. C.*

And afterwards, to wit, at the November term of the court aforesaid, in the year one thousand eight hundred and forty-three, the following order was made herein, to wit:

E. M. Pogue appointed guardian ad litem for infant heirs of E. Pogue, deceased.

It is ordered by the court that Eli M. Pogue be appointed guardian ad litem for Eliza J. Pogue, Robert Pogue, Trimble Pogue, Amanda Pogue, and Maria Pogue, infant heirs of Edwin Pogue, deceased, and that he defend this suit for them accordingly.

Cause set for hearing.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of October, and year one thousand eight hundred and forty-four, until which time this cause was continued, came the complainants, by their counsel, and set this cause down for hearing at the next November term.

Objection to cause set for hearing sustained.

And afterwards, to wit, at the November term of the court aforesaid, came the parties, by their counsel, and this cause having been called for hearing, the defendants, by their counsel, objected that the necessary parties, and those made by the bill of Walden's heirs, were not

before the court, especially that there was no answer nor appearance for the infant heirs of Edwin Pogue; which objection was sustained.

Order on E. M. Pogue to answer.

Whereupon the counsel for Walden's heirs moved the court to appoint another person guardian ad litem for said infants in the place of said Eli M. Pogue. On consideration, it is ordered that the complainants cause a copy of the order appointing the said Eli M. Pogue the guardian of said infants, and also *of* this order, [to] be served on him the said Eli M. Pogue, and unless he, the said Pogue, shall, on the next rule day, twenty days from and after said service, file the answer for said infants, the complainants may then move for the appointment of another person in substitution of him as guardian; and the order setting the cause for hearing is set aside, and the cause remanded to the rules.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of January, and year one thousand eight hundred and forty-five, came Eli M. Pogue, guardian ad litem for Elizabeth J. Pogue, Robert Pogue and others, infant heirs of said Edwin P. Pogue, by his counsel, and filed his answer herein; which answer is as follows, to wit:

Answer of Pogue's heirs by E. M. Pogue.

The answer of Elizabeth J. Pogue, Rob. Pogue, Franklin Pogue, Amanda Pogue, and Maria *Edwin* Pogue, infant heirs of Edwin P. Pogue, deceased, by their guardian ad litem, Eli M. Pogue, to a bill of revivor filed against them in the circuit court of the United States, for the district of Kentucky, by Richard Walden, &c., describing themselves as heirs of Ambrose Walden, deceased. These defendants admit that they are children and heirs of their deceased father, Edwin P. Pogue, but they state that of their own knowledge they know nothing of the matters and things in contest in the cause sought to be revived, other than what appears by the records and proceeding in said cause. They answer that their deceased father, Edwin P. Pogue, in his lifetime answered, to which answer they refer and adopt as a part of their answer. They admit whatever is admitted in said answer of their father, and deny whatever is denied in said answer. They cannot admit anything not admitted in said answer of their father; and being ignorant of the matters and things alleged, require that the same may be established by proof. They know not whether the complainants in the cross bill are or are not the heirs of Ambrose Walden, deceased, and require of them proof thereof; and having answered unto, they pray to be hence dismissed with their costs.

ELIZABETH J. POGUE,
ROBERT POGUE,
FRANKLIN POGUE,
AMANDA C. POGUE,
MARIA EDWIN POGUE,
By ELI M. POGUE, *Guardian ad litem.*
GOODLOO, *Solicitor.*

Complainants' replication to answer of Pogue's heirs.

And afterwards, to wit, at March rules of the court aforesaid, came the complainants, by R. Wickliffe, their counsel, and for replication to the answer of Eli M. Pogue, guardian ad litem for said defendants, say, that the matters and things set forth and alleged in said answer are not true, and that the several allegations in their bill of revivor are true, and therefore they say they ought not to be precluded from the relief sought in their bill; wherefore they, for the relief sought, &c., and will ever pray, &c.

And afterwards, to wit, at the May term of the court aforesaid, and year aforesaid, the following proceedings were had herein, to wit, May thirteenth:

Walden and Proctor—agreement.

The complainants admit that the defendant, Proctor, claims under Rose, the original defendant in ejectment, who sold and conveyed after the expiration of the demise; and that there has always been a regular succession of purchasers holding under Rose down to Proctor, and that Proctor is now by himself or tenants in possession, and holds under the deed from Rose and his alienees, and they have been in possession for more than twenty years before the demise was extended, in one thousand eight hundred and twenty-four; and the parties agree that the order of court filed in the case, proving the heirs of Ambrose Walden, shall be read as evidence, and have the same effect as if the fact was proven by depositions in the usual way; and it is further agreed that Proctor shall have the same advantage from this argument as if the facts were alleged by answer and proven in the cause in the regular way.

R. WICKLIFFE, *for Walden.*
MOREHEAD & GOODLOE, *for Proctor.*

Whereupon this cause came on to be heard, and was heard in part; but there not being time to go through with the hearing, the same is laid over until to-morrow morning, May the fourteenth.

This day came again the parties, by their counsel, and this cause having been fully heard as to the defendant, Jno. N. Proctor, was argued by counsel. On consideration thereof, it is ordered, adjudged, and decreed as follows, by the court:

Decree.

It appears that the land in possession of this defendant, is the parcel of the land in controversy for which the judgment in ejectment against Jonathan Rose and Lewis Craig, his landlord, was rendered in one thousand eight hundred, for a term which had then expired; and it is admitted by the parties that Rose afterwards sold and conveyed it by deed, and his alienee having taken possession of it under this deed more than twenty years before the extension of the demise in the declaration, in the year one thousand eight hundred and twenty, from [which time] he and his successive alienees have ever since been in possession, holding

under the deed of Rose and his alienees down to Proctor, this defendant. It does not appear that this defendant ever was a party to any of the suits, motions, or other proceedings afterwards had in this court in relation to this land, until in one thousand eight hundred and thirty-five, when he moved the court to have the order extending the demise set aside, and was afterwards made defendant, and served with process in these proceedings, upwards of thirty years. It seems to the court that the length of the adversary possession of this land by this defendant, and those of whom he purchased and held by absolute deeds, is a bar to all the relief asked against him by the complainants. It is therefore ordered, adjudged, and decreed, that the several bills of the complainants, heirs of Walden, against this defendant, Jno. N. Proctor, be and the same are hereby dismissed. And it is ordered that the complainant pay to him, John N. Proctor, his costs in his defence herein expended; and the hearing of the cause as to the other defendants was proceeded with.

Agreement of the parties.

On motion of the parties, by their counsel, the following written agreement was filed and here entered: It is agreed that the matters in dispute between Walden's heirs and Tebbs, Palmer, and Jones, have been compromised and settled, and no decree is sought against them or either of them.

And it is further agreed, that in any decree that may be rendered, the compromise entered into with Pogue's heirs shall be observed and respected. When Mr. E. M. Blackburn comes, if he says this [is] not correct, it shall be cancelled.

C. S. MOREHEAD,
R. WICKLIFFE.

Further agreement of the parties.

May the fifteenth. This day came the parties, by their counsel, and filed the following amendment of the agreement recorded of yesterday (to be inserted) in that agreement, after the word "respected" to wit:

But the cause is to proceed in the same manner as to Pogue's heirs and Bodley's heirs, and the other parties, except Tebbs, Jones, and Palmer, as if this agreement was not made; but the agreement made in nature of a compromise or sale between Pogue's heirs and Walden's agent, shall be executed in the same manner as if a judgment or decree was not rendered.

(Signed) R. WICKLIFFE,
MOREHEAD & GOODLOE.

Abated as to H. S. Bodley, &c.

And on motion of R. Wickliffe, esq., complainants' counsel, who suggested that the defendants, Hugh S. Bodley, James Lindsay, Nancy Lindsay, Alfred Duncan, Mary H. McMillan, William Drake, John Pogue, Robert Pogue, and Jonathan Rose, had departed this life without issue, it is therefore ordered that this suit as to them do abate.

This day came again the parties, by their counsel, and the cause having been fully heard as to Benjamin Umstead, and the arguments of counsel having been heard thereon, it is ordered as follows, by the court:

Decree as to B. Umstead.

This defendant, it appears, was one of the complainants in the original injunction bill, filed in eighteen hundred and twenty-five; it appears by that bill that he was the purchaser of the parcel of land for which this judgment in ejectment was rendered in eighteen hundred against Charles Rector, and by his answer herein that he is in possession of a parcel of one hundred and three acres and sixty poles, which was conveyed to him by the deed of John Johnson, of the 30th of March, 1818, which he exhibits within the grant of 10,000 acres to Rutherford and Tibbs, and of one other parcel purchased by him of John D. Taylor, Robert Taylor, and L. A. Sandridge; but it does not appear whether the land he so purchased of Rector is one of the parcels whereof he is now in possession; and by the final decree on the bill of injunction, the ancestors of the present complainants was perpetually enjoined from all proceedings on the judgment at law, he had recovered against Rector, and in his several other actions of ejectment in the bill mentioned, which was without the entry of Walden, whereon patent on which he had recovered the judgment was founded, and the interlocutory injunction was dissolved only as to the land within the entry of Walden, as it was exhibited by the decree without a decision of what was the position of the several parcels of land for which the judgment had been rendered; and it does not now appear whether the parcels of land in possession of this defendant is land as to which the injunction was dissolved, or land as to which it was made perpetual; nor does it appear whether these parcels of land are of the land for which the judgment in ejectment was rendered against Charles Rector, or in any one of the actions of ejectment against the other parties; it therefore does not appear whether the complainants are entitled to an order against the defendant for the possession of any land, or if for any of the land in his possession, for what part thereof.

It is therefore ordered, that the surveyor of Mason county do go upon the land in controversy, and ascertain the position and boundaries, if necessary, of these several parcels of land. The parcel of one hundred and three acres, conveyed by John Johnson to Benjamin Umstead by deed of March 30th, 1818. The parcel purchased by Umstead of John D. Taylor, Robert Taylor, and L. A. Sandridge, the land of which Charles Rector was in possession at the commencement of the ejectment against him, February 17th, 1797. And the parcel of land of which William Allen was in possession on the same day when the ejectment was commenced against him; and, if necessary, the several parcels of land of which the defendant in each of the other actions of ejectment was in possession on the same day, when they were severally served with the copy of the declaration. And having done this, that he

lay down a diagram of their several parcels of land, upon one of the copies of the plat, made and returned here according to the interlocutory decree, and which was approved and referred to in the final decree, and that he make his report with a statement of his data, and how it was obtained. And the cause having been fully heard, as to the defendant Thomas Blair, and argument heard therein, on consideration thereof, it is ordered and decreed as follows, by the court:

Decree as to T. Blair.

This defendant was not a party to any of the actions of ejectment, or to the bills of injunction, or other proceedings in respect to the land in controversy, until eighteen hundred and thirty-six; but he is the successor of Abraham Shockey, after intermediate occupants; and he is in possession of a parcel of about fifty acres of land, for which the judgments in ejectment against Shockey was recovered, and he came into the possession in eighteen hundred and thirty-two, by deed of conveyance from Benjamin Fitzgerald, to whom the land was conveyed by Robert Pogue, one of the original complainants, in eighteen hundred and twenty-eight; after the demise in the declaration had been extended, and the judgment in ejectment thereby made effectual, and whilst the bill with injunction against the judgment was pending, it is alleged, that Pogue, the purchaser from Shockey, and his successor, had sold the land to Tilton and Huston, in eighteen hundred and fourteen, and had given his bond for the title, and that the land was thenceforward occupied by them and Gilson Hambrick, and by Benjamin Fitzgerald, the assignee of the bond, until eighteen hundred and twenty-eight, when this deed was made to Fitzgerald in fulfilment of this bond; and there is proof that Hambrick was in possession eight or ten years, but it does not appear that the possession was by actual residence; and the bond is not produced nor is its execution or existence shewn prior to the extension of the demise and injunction against the judgment; it therefore does not appear to the court, that the possession of this land was so held at the time of the extension of the demise, and the obtaining of the injunction as to protect Blair, the successor in its possession with a claim of title so derived from one of the complainants in the bill of injunction, against the complainant's demand of its possession by this proceeding, and the continuance afterwards; the possession so obtained cannot avail him.

It is therefore adjudged and ordered, that the defendant, Thomas Blair, surrender to the complainants the possession of said parcel of fifty acres of land, being the land described and bargained and sold by the deeds of Robert Pogue to Benjamin Fitzgerald, bearing date the 16th day of August, eighteen hundred and twenty-eight, and recorded on that day in the clerk's office of the Mason county court, and here filed; it appears that the other parcels of land in the possession of this defendant, Blair, are not of the land for which the judgment against Shockey, or any defendant in either of the other actions of ejectment, was recorded; and it does not appear that this defendant's possession thereof was

so obtained, or has been held in such manner as to entitle the complainant to a recovery of them, or any part thereof by this proceeding.

It is therefore ordered that, as to the residue of the land claimed by the complainants of this defendant, their bills be, and they are hereby, dismissed, and the hearing of the cause was proceeded with as to the other parties. May the sixteenth.

This day came again the parties, by their counsel, and the hearing of this cause was proceeded with. "May the seventeenth."

Motion to set aside or suspend decrees.

The complainants, by R. Wickliffe, esq., their counsel, moved the court to set aside or suspend the decree in this case as to John N. Proctor, upon the grounds stated in the petition, and to allow the said Wickliffe to withdraw his admissions, or so to modify them as to conform to the truth of the case, and to grant in the case the proper relief and orders or decree.

The counsel of the complainants read their petition containing his statements in support of their above motion; and the defendants' counsel read their statements of the matter, and each of the counsel waiving affidavits to their respective , the same were filed.

Whereupon the motion was heard, but the court not being advised took time; and *and* it is ordered that the several orders and decrees made in the cause at the present term be suspended until the motion of the complainants shall have been decided, or the court shall otherwise order. "June the fourth."

This day came again the parties, by their counsel, and the court having considered of the motion of the complainant made herein at the present term, on the seventeenth day of May, on the petition of their counsel, and the matters thereof, and which are shown by the answer of the defendants' counsel, and thereupon submitted: It is now adjudged and ordered as follows:

Decree as to B. Umstead and T. Blair set aside, &c.

It seems to the court that the complainant ought not to be concluded by the admission of facts made by their counsel in the motion and petition mentioned, and that the defendants, since complainants have receded from the admissions on their part, ought not to be held to the admissions made by their counsel in consideration thereof; and the action of the court subsequent thereto having been on their admissions of facts without an investigation, on consideration of this case without them:

It is ordered that the several orders and decrees made herein, at the present term, on the fourteenth day of May, in and upon so much of the case as was against and affects the defendant, Benjamin , and on the same day, in and upon so much of the case as was against and affects the defendant, Thomas Blair, be and the same are severally set aside, and shall be held for naught. The parties are respectfully allowed to offer proof as to the several facts in their said admissions contained, and entered on the records at the present term, so that on the hearing of the

cause hereafter, the truth of the said several matters may be determined upon all of what has occurred, and shall be shown. The hearing of the case at the present term shall stand for naught. The order setting down the cause for hearing is set aside.

Complainants to furnish names of defendants.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, came Richard Walden, George Carter and Judith, his wife, late Judith Walden, Jno. Walden, and William Walden, by their counsel, and the defendants, Jno. N. Proctor, Benjamin Umpstead, and Thomas Blair, Elizabeth J. Pogue, Maria Edwin Pogue, Robert Pogue, Franklin Pogue, Amanda C. Pogue, and Eli M. Pogue, heirs of Edwin P. Pogue, deceased, by their counsel, and this cause having been called on the docket for the hearing, it is ordered that the counsel of the complainants furnish to the court a statement of the names of the numerous other defendants, made by their several bills, besides those above named, who now appear, distinguishing those introduced by each bill, and showing first who of those have answered the several bills; second, who of them having been served with the required process have not amended all the bills, or any of them; and third, who of them have been neither served with the required process, nor appeared so as to have *been* made the service unnecessary; whereupon the counsel of the complainants, asking time to prepare the statement on his motion, the hearing of the case is postponed until to-morrow, November the eighteenth.

Defendants' exceptions to Duncan and others' depositions sustained.

This day came Richard Walden, George Carter and Judith, his wife, late Judith Walden, John Walden, and William Walden, by their counsel, and the defendants, John N. Proctor, Benjamin Umpstead, Thomas Blair, Elizabeth J. Pogue, Robert Pogue, Franklin Pogue, Amanda C. Pogue, Maria Edwin Pogue, and Eli M. Pogue, heirs of Edwin P. Pogue, deceased, by their counsel; and the defendants' exceptions to the depositions of Joseph Duncan, James Morris, and Eli Metcalfe, came on to be heard, and the court being sufficiently advised, it is decreed and ordered, that said objections be sustained, and that the said depositions be suppressed.

Compl'ts' exceptions to H. Brown and others' depositions sust'd.

And the complainants' exceptions to the depositions of Henry Brown, *Felin* Patton, Eli Metcalfe, William P. Stout, and Robert Ewing, also came on to be heard, and was heard; and the court being sufficiently advised, it is adjudged, decreed, and ordered, that the said complainants' exceptions be sustained, and that the said depositions be suppressed; and the parties aforesaid, by their counsel, entered into the following agreement, which, on motion of the parties, the court ordered to be recorded, to wit:

Agreement of the parties.

It is agreed that either party may take the depositions of witnesses heretofore taken in the cause, or any other deposition, either according to the act of Congress, or to the practice of the State courts; and either party may make any survey on the ground, by the surveyor of the county, that may be deemed important, giving notice to the other party of the time of making it.

WICKLIFFE, LOUGHBOROUGH, &c.
MOREHEAD & GOODLOE.

H. J. Bodley appointed guardian ad litem.

November the 19*th.*

This day came the parties aforesaid, by their counsel, and, by their consent, Harry J. Bodley is appointed guardian ad litem for Ellen P. and George J. Bodley; and thereupon the said Harry J. Bodley filed the answers of himself and William S. Bodley, William H. Hurst and Ann J., his wife, Edward B. Church and Maria J., his wife, John F. Bodley, Thomas Bodley, Charles S. Bodley, *Charles S. Bodley*, and as guardian for Ellen P. Bodley and George J. Bodley; and, by consent of the parties, the answers of the said H. J. Bodley, and others, as aforesaid, is received without oath, and to which answer the complainant replied generally; and, by consent of the parties, this cause is continued until the next term of this court.

Which answer is as follows, to wit:

Answer of H. Bodley and heirs of T. Bodley.

The answer of Harry J. Bodley, William S. Bodley, William H. Hurst and Ann J., his wife, Edward B. Church and Maria J., his wife, E. B. Ousley and Catherine E., his wife, John F. Bodley, Thomas Bodley, Charles S. Bodley, Ellen P. Bodley, and George J. Bodley, the two last infants, by H. J. Bodley, guardian ad litem, heirs of Thomas Bodley, deceased, and said H. J. Bodley, administrator of said Thomas Bodley, deceased, to an original and amended cross bill filed against them, &c., in the circuit court of the United States for the eighth circuit and Kentucky district, by the heirs of Ambrose Walden, deceased. For answer they say that they are not now, nor never have been, in possession of any part of the land in controversy in this suit, neither by themselves or tenants. Further answering, they say, their ancestor, Thomas Bodley, deceased, died intestate, and they, nor either of them, have received *no* estate, real, personal, or mixed, by descent or otherwise, from him. They know nothing of the other matters and things in the complainants' bill alleged, and, having fully answered, pray to be hence dismissed, with their costs.

H. J. BODLEY, &c.
GOODLOE, *Solicitor.*

And afterwards, at the May term of the court aforesaid, and year one thousand eight hundred and forty-six, the following proceedings were had herein, to wit:

May the 15*th.*

Came the complainants, Richard Walden, George Carter and Judith, his wife, late Judith Walden, John Walden, and William Walden, by their counsel, Robert Wickliffe, esq., and P. S. Loughborough, esq.; and the defendants, Samuel and Jane Garrison, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, and Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, who was an heir of Robert Pogue, deceased, and Benjamin Umpstead, Thomas Blair, and John N. Proctor, came by their counsel, Charles S. Morehead, esq., and W. C. Goodloe, esq.

Dismissed as to James Pogue and others.

And on motion of the complainants, by their counsel, the bills of the complainant, as to James Pogue, Robert Pogue, heirs of Robert Pogue, deceased, Judith Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, heirs of B. Clarke, deceased, Henderson Duncan, Mitchell Duncan, William Duncan, Benjamin Duncan, Martha Duncan, Elizabeth Duncan, John Patton and Nancy, his wife, John Campbell and Mary, his wife, heirs of David Duncan, deceased, is dismissed.

Heard as to Garrison and others, and depositions of Duncan and others, suppressed at the last term, may now be read.

And thereupon this cause came on to be heard against the said defendants, Samuel and Jane Garrison, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, and Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, who was an heir of Robert Pogue, deceased, and Benjamin Umpstead, Thomas Blair, and John Proctor, Harry J. Bodley, *Harry J. Bodley*, William S. Bodley, William H. Hurst and Anne J., his wife, Edward B. Church and Maria J., his wife, E. B. Ousley and Catherine E., his wife, John F. Bodley, Thomas Bodley, Charles S. Bodley, Ellen P. Bodley, and George J. Bodley, William J. Mackey, John and Lindsay Pogue, heirs of Robert Pogue, deceased, Daniel Clarke, Susan Sumralt, Thomas Clarke, Mary H. McMillan, Susan Lacy, and Thos. Lacy, heirs of B. Clarke, deceased, Alfred Duncan, Jane Duncan, James Duncan, James Lindsay and Nancy, his wife, heirs of David Duncan, deceased, Larkin and Eliza Sandridge, Robert Taylor, sen., Robert Taylor, jun., and John D. Taylor, heirs of Drake, deceased.

And it is agreed that the depositions of Joseph Duncan, James Morris, Eli Metcalf, Harry Brown, Felix Patton, *Eli Metcalf*, William P. Stout, and Robert Ewing, which were suppressed at the last term, may be read.

May the 16*th.*

This day this cause was further heard.

Agreement of parties, &c.

May the 17*th.*

Came the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, deceased, heirs of Robert Pogue, deceased, Benjamin Umstead, Thomas Blair, and John N. Proctor, came, by their counsel.

The counsel for the complainants struck out, and expunged from the bills, certain clauses thereof decreed impertinent, and substituted, for a part thereof, other clauses by interlineation, the counsel of the defendants assenting thereto; and thereupon the cause was further heard.

Heard in part.

May the 19*th.*

Came again the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and William L. Pogue, and heirs of Edwin P. Pogue, who was an heir of Robert Pogue, by their counsel, and Umpstead, Blair, and Proctor; and on motion of the complainants, Richard Walden, &c., the original case of Bodley, Pogue and others, on the bill of eighteen hundred and twenty-five, consolidated with the cases of Clarke's heirs and Duncan's heirs against the same, and the bill of them, R. Walden and others, filed at November term eighteen hundred and forty, for the purpose of reviving said case, and leaving the possession of the land according to the mandate of the supreme court, came on to be heard, &c., was heard in part, and the above cause of Walden vs. Bodley, &c., was further argued.

Fully heard—court took time, &c.

May the 20*th.*

Came the complainants, by their counsel, and the defendants, Samuel and Jane Garrison, and William L. Pogue, and the heirs of Edwin P. Pogue, all heirs of Robert Pogue, deceased, and Benjamin Umpstead, Thomas Blair, and John N. Proctor, and their causes were fully heard; but the court, not being advised, took time, &c.

Decree directing master, &c.

MAY TERM, *August* 10*th.*

The master is directed to lay down in connection a plat of the land granted by the patent to A. Walden, as represented on the plat referred to in the final decree of eighteen hundred and thirty-four, beginning at the corner shewn the surveyor by Simon Kenton, and represented by figures 7, 8, 9, 10, on that plat; and the land embraced by the entry of Walden, as established by that decree and shown on the plat, and then upon this connection upon the four hundred acres of land which was laid off and assigned by the commissioners of Fleming county to Lewis Craig, as locator, as represented on the plat and survey made by Whit-

field Craig on February fourth, seventeen hundred and ninety-four, which constitutes part of the several agreed cases of the ejectments of Walden against Craig and Chapin, Craig and Allen, Craig and Rutter, Craig and Shockey, and Craig and Rose; and that he then represent, upon this diagram of four hundred acres so laid off for Craig, the several parcels thereof which were sold by him to the said Rose, Allen, and Rector, and the parcel sold by Rose out of his purchase to A. Shockey, and the parcel sold by Allen out of his purchase to the said Chapin, and of which the said Chapin, Allen, Rutter, Shockey, and Rose were respectively possessed at the commencement of said actions.

Master's report insufficient.—Directions how he shall report, &c

MAY TERM, *August 15th.*

The master made a report, under the order made herein, at the present term. It is found insufficient because of its want of data, which can be obtained only by work upon the ground. It is, therefore, ordered, that the same matter [be] referred to Athelston Owens, surveyor. He will be furnished with copies of these papers:

First. The final decree of eighteen hundred and thirty-four. Second. The plat made out by himself, on which the decree was rendered, and to which it refers. Third. The survey and division plat filed in, and constituting part of, the record of the ejectments made out by Whitfield Craig. Fourth. A copy of the order of reference to the master at the present term, and his report thereon. Fifth. Extract from the depositions since the first claim of eighteen hundred and thirty-four, which show how the several parcels of land in controversy have been held, claimed, and occupied, which shall be selected and designated by the counsel of the parties respectively. Sixth. He is directed to go on the ground, and having ascertained the land which is covered at once by both the entry and patent of Walden, and designated in the plat by letters and figures S, F, S, H, I, 7, he will ascertain, by actual survey, the parcel of four hundred acres assigned to Lewis Craig as his part as locator. He will find the several corner trees, or the position in which they stood; if this cannot be done, he will fix the corners according to the rules in such cases, and show how he does it. He shall then lay down, so far as he shall be enabled to do it, first, the several parcels of the four hundred acres sold by Craig to Jonathan Rose, Charles Rutter, and William Allen; second, he will show the part sold by Rose to Shockey; third, he will show the part sold by Allen to Chapin; fourth, the part of Allen's purchase which he sold to Drake.

It is required that the parcel of land within the locator's part, in the possession of such of the defendants, Rose, Allen, Rector, or Rutter, Shockey, and Chapin, at the commencement of the ejectment against them, shall be represented on the plat distinctly, if practicable; if not, then as nearly as it can be done, so that it may certainly appear what land was recovered in each action.

It is then required that each sub-division, and each of these parcels of land, or any of them, and every redivision or other changes of par-

cels which occurred from the date of the judgments in ejectment down to the present time, shall be ascertained and stated in convenient form; a diagram will be made showing the several parcels into which the locator's part of the land was divided, and how each parcel was occupied on or about the several dates, May, eighteen hundred; January, eighteen hundred and fifteen; May, eighteen hundred and twenty-four; December, eighteen hundred and thirty-four; May, eighteen hundred and forty-one, on the present date; let there be one separate diagram for each date. In the report the surveyor will state the document, deposition, or other means, by which he shall have ascertained the facts he states, and how he obtained the data of his plats, and objects represented thereon.

The surveyor will proceed on the application of either party, showing he had given reasonable notice to the other; he will inspect and report all the title papers produced to him.

He may do any other work on the ground, and lay down on the plats the result of said work, or any other objects found upon, or in connection with, the land; either party may direct and represent the same in his report.

Defendants moved the court for a rule on complainants to make election, &c.

"November term, November tenth." This day came the defendants, by their counsel, and moved the court for a rule on the complainants to make their election whether they will proceed under the mandate of the supreme court, or on the bills or cross bills filed by them; which motion the complainants' counsel objected to.

Cause again heard.

And afterwards, to wit, at the May adjourned term, tenth day of June, in the year one thousand eight hundred and forty-seven, came the heirs of Ambrose Walden, by their counsel, and the defendants, Samuel and Jane Garrison, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, and Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, who was an heir of Robert Pogue, deceased, Benjamin Umpstead, Thomas Blair, and John N. Proctor, by their counsel; and this cause came on, and was again heard.

June 847

Final decree.

On the hearing the complainants read their cross bill, filed November the 25th, 1834, their amended cross bill, filed the 9th of May, 1835; amended bill, filed November 13th, 1835; amended bill, filed at June rules, 1836; bill of revivor, filed at January rules, 1842; the answer of Bodley's heirs, filed at the December rules, 1839; the answer of E. M. Pogue, filed March 3, 1843; the answer of Garrison and wife, William L. Pogue, E. P. Pogue, and John N. Proctor, filed at the June rules, 1837; the answer of Tebbs, Blair, Jones, and Palmer, filed at Decem-

ber rules, 1836, read, however, as the answer of Blair only; the answer of Elizabeth J. Pogue, Robert Pogue, Franklin Pogue, *Alexander* C. Pogue, and Maria Edwin Pogue, infant heirs of Edwin P. Pogue, by Eli M. Pogue, filed at January rules, 1845; the answer of Garrison and wife, filed at June rules, 1837, the answer of Umpsted, filed November 26th, 1842, and the deposition of Eli T. Metcalfe, Thos. Walden, Joseph Duncan, and John J. Morris.

The defendants read the following depositions: David L. Runion, Joseph Tibbs, Elijah Johnson, Leroy Dobyns, Ebenezer Lynn, Henry Bruce, Elizabeth Patton, William P. Stout, Robert Ewing, Athelston Owens, and Joseph Duncan, second time taken. The answer of Bodley's heirs, filed November the 19th, 1845; Athelston Owens' report of October the 22d, 1845; J. C. Herndon's, commissioner's report of August, 1846, and Athelston Owens' report of October, 1846.

And the complainants referred to, and claimed as part of this case, the original records of the several ejectments, suits of Walden against Craig and Rose, Walden vs. Craig and Chapin, Walden vs. Craig and Allen, Walden vs. Craig and Rector, and Walden vs. Craig and Shockey, including the plats and papers referred to in the agreement of facts on which those cases were decided, and all the proceedings in said actions and in chancery enjoining the judgment.

The records of the cases of the bills of Bodley, Pogue, &c., against Walden, with the bills of Duncan and Clarke, and the bill of Bodley, &c., against said Walden, in the Fleming circuit court, with the proceedings thereon, and the bill of revivor of Walden's heirs against Bodley and Pogue, to revive the suit, and for proceedings, according to the mandate of the supreme court, filed November, 1842, with the proceedings thereon, down to and including the decrees.

And the arguments of the counsel of the parties being heard, on consideration thereof, it is ordered and decreed that the complainants' bills be, and the same are hereby, dismissed, but without prejudice to any other suits or proceedings. It is further decreed, the complainants pay to each of the defendants, Harry J. Bodley and his co-heirs of Thomas Bodley, deceased, their costs; to Eli M. Pogue his costs, Samuel Y. Garrison and his wife, William L. Pogue, Edwin P. Pogue, and John N. Proctor, their costs; Elizabeth J., Robert, Franklin, Amanda C., and Maria Edwin Pogue, heirs of Edwin P. Pogue, their costs; to Benjamin Umpstead, his costs, and to Thomas Blair his costs, in the defence of this suit expended.

Appeal granted.

Whereupon the complainants, the heirs of Ambrose Walden, prayed an appeal to the Supreme Court of the United States from the decree and orders entered in this case; and the defendants, by their counsel, admitted that the land in controversy was of the value of two thousand dollars; the appeal is granted, upon their entering into bond in the clerk's office, within ten days from this time, in the penalty of three thousand

dollars, with Edward M. Blackburn, their security, conditioned according to law.

The following are copies of depositions read by Walden's heirs, to wit:

District court of the United States, for the Kentucky district, holden in Frankfort, wherein Ambrose Walden's heirs are complainants, and John Kincaid and others are defendants.

Deposition—Joseph Duncan.

The deposition of Joseph Duncan, taken at the house of Edw'd H. Herndon, in the county of Mason, and State of Kentucky, on the 22d day of September, eighteen hundred and forty-five, agreeably to the notice hereto annexed, to be read as evidence on the part of the complainants in a suit in chancery now depending in the circuit [court] of the United States. The deponent being of lawful [age,] and first duly sworn, deposeth and saith:

Question by complainant. State all you know respecting the land claimed by Ambrose Walden on the waters of Flat fork, in the county of Mason, now in the possession of John Kincaid and others, and how long you have lived in the neighborhood.

Answer. I have lived in the neighborhood for fifty years. This deponent says that Jonathan Rose was in possession of the land now in the possession of John Kincaid, say in the year 1806, and my impression is he, Rose, held under Craig, and he sold to his son, Jonathan Rose, about the year 1818, and said Rose sold to John Proctor about the year 1824 or '5, and he, Proctor, sold to John Kincaid, the present occupant, about the year 1838, and, as I understand, this was the locator's.

Question by same. State if you please if Benjamin Umpstead does not live on the same land of Walden's, and how long he has lived there.

Answer. He lives on the same land claimed by Walden, and has lived there upwards of thirty years, and holds under John Johnson, and he, Johnson, under John Bell.

Question by same. Does not Thomas Blair live on the same survey claimed by Walden?

Answer. Blair does live on the same claim, and has lived on the land 15 or 18 years, and held under Benjamin Fitzgerald, who purchased of Gilson Hambrick, and Gilson Hambrick under Tilton and Huston, and Tilton and Huston held under Robert Pogue.

Question by same. Please state who settled on the land now in possession of D. S. Bradley.

Answer. Isaac Shockey was on the land about the year eighteen [hundred] and six, and he sold to Thomas and John Cash, and John Cash's heirs sold to James Tibbs, and James Tibbs sold to William Jones, and Jones sold to William Henry, and Henry's heirs sold to D. S. Bradley, who is the present occupant.

Question by same. Do you know of any new tenants living on the land claimed by Walden for the last forty years, except those already named?

Answer. I know of none.

Question by same. Do you not know that Dale Carter purchased of Ambrose Walden part of this same tract, say one hundred or one hundred and fifty acres, upwards of forty years ago, and that he has held peaceable possession?

Answer. From information, Carter purchased one hundred or one hundred and fifty acres of land of Walden, and he and his heir or assigns has held peaceable possession ever since, so far as I know or believe; and further this deponent saith not.

JOSEPH DUNCAN.

Deposition of James Morris.

The deposition of James Morris, taken at the same place, and *at the same place, and* for the same purpose.

The deponent being of lawful age, and first duly sworn, deposeth and saith, that he well recollects that Jonathan Rose first purchased his land of Lewis Craig, who claimed a locator's part in Walden's survey, and that Rose settled on the land as early as the years 1794 or 1795; and that said Rose sold the said land to his son, Jonathan Rose, subsequently; and he, the last Rose, sold the land to John N. Proctor, and said Proctor sold the same, as this deponent is informed, to John Kincaid, who now lives on the same; this deponent further states that he recollects that Charles Rector settled on a part of the place now held by Benjamin Umstead, in Walden's survey, he believes on or about the year 1795, and that Rector sold the same to Charles Metcalfe, as this deponent is informed, and that said Metcalfe sold the same to John Bell, who sold the same to John Johnson, who sold the same to Benjamin Umpstead, who now lives on the same; and the other part of said Umpstead's place was settled by William Allen, in the year 1794 or 1795, or earlier, and that said Allen sold the same to Drake, and Drake's heirs sold the same to said Umpstead, who still has the occupancy and possession of the same. This deponent recollects that some time previous to the year 1800, as this deponent believes, that Abraham Shockey built one or two mills, he thinks a saw mill and grist mill, on the land claimed by Walden, and that Robert Pogue afterwards occupied the same, and sold the same to Tilton and Huston, who sold the same to Gilson Hambrick, who sold the same to Benjamin Fitzgerald, who sold the same to Thomas Blair, who now has the possession and occupancy of the same, and has lived on the same, as this deponent is informed, for the last 15 or 16 years, further this deponent saith not.

JAMES MORRIS.

Deposition of Thomas Walden.

The deposition of Thomas Walden, taken at the same house of Thos. Walden and son, in the county of Rappahannock, in the State of Vir-

ginia, on the 20th day of June, A. D. 1845, to be read in evidence in the suit in chancery depending in the circuit court of the United States for the district of Kentucky, the one Bodley and Pogue and others vs. Walden and others, and the other Walden and others against Bodley and others; who being duly cautioned, examined, and sworn to depose the whole truth, deposeth and saith:

Question 1st by Walden and others. Were you acquainted with Ambrose Walden, deceased, and when did he die, and who are his children and heirs at law? State their names, ages, and residences, and to whom the females are married, their names, and that of their husbands, and how long they have been married? State whatever you know in answer to this interrogatory.

Answer. I was acquainted with Ambrose Walden, deceased, from my earliest recollection to the time of his death, (he being my brother,) which occurred in the spring of the year 1840; his children are Richard Walden, who, to the best of my knowledge, is aged fifty-seven or eight years, and resides in the county of Pittsylvania, State of Virginia; Judith Walden, who, to the best of my knowledge, is aged fifty-six or seven years, who married George Carter, and who, together with her husband, resides in the county of Fauquier, State of Virginia, and who, has been married about thirty years; William Walden, aged fifty-two or three years, and resides in the county of Rappahannock, State of Virginia; John Walden, aged about fifty years, and resides in the county of Fauquier, State of Virginia; as to Judith Walden, who married Geo. Carter, and as to J. Walden, all of whom reside in the county of Fauquier, about twenty-five miles distant from this place, they were all living a few weeks since; Wm. Walden I know to be living, for he is now present at the taking of this deposition; as to Richard Walden, who resides one hundred and fifty, or one hundred miles distant from the place, he was living three months ago, and I have reason to believe is still living; for in the event of his death information would have been received by his brother William, who resides immediately in his vicinity. The above named four children are all the heirs at law of my deceased brother, Ambrose Walden, and I believe they are all living; and further this deponent saith not.

T. WALDEN.

STATE OF VIRGINIA,
Rappahannock county, to wit:

I, Lyle Millan, a justice of the peace for the county and State aforesaid, do state, that at the time and place stated in the caption of the deposition, the within named Thomas Walden appeared, and being duly sworn and charged by me, as is stated in the caption, did depose and give the foregoing deposition in my presence, and in my presence did sign the same. I also certify, that the whole of the deposition was written by me in the presence and by direction of the witness, and that I am neither agent, attorney, or counsel for either of the parties now interested in the event of the cause; and I further state and certify, that the residence of the deponent, and the place of taking the depo-

sition, is a greater distance from Frankfort, in Kentucky, than one hundred miles, and that the deposition was taken at the instance of the said Walden, and others; that I caused no notice to be served on the adverse parties, because neither they nor any agent or attorney of theirs, known to me, reside within one hundred miles of the place of taking the deposition; all of which is certified as the cause of taking the deposition.

Given under my hand, this 30th day of June, 1845.

LYLE MILLAN.

Deposition [of] Eli Metcalfe.

The deposition of Eli Metcalfe, taken at the same time and place, and to be read in the same suit as the deposition of Joseph Duncan and James Morris.

This deponent being of lawful age, and first sworn, deposeth and saith: That he well recollects that Jonathan Rose settled on the place now occupied by John Kinkaid, in Walden's survey, as early as the year 1794, for he was at his house in that year; said Rose sold the same subsequently to his son, Jonathan Rose, who sold the same to John N. Proctor, who sold the same to the said John Kinkead, who now lives on and occupies the same. This deponent also well recollects that Charles Rector settled on the place, or a part of it, now occupied by Benjamin Umstead, as early as the year 1795; said Rector sold the same to this deponent's brother, Charles Metcalfe, who sold the same to John Bell, who sold the same to John Johnson, who sold the same to the said Umpsted, who still occupies and lives on the same; and that the other part of said Umpsted's place was settled by William Allen about the same time that Rector settled, and Allen sold the same to Drake, and Drake's heirs sold the same to the said Umpstead, who yet occupies the same. This deponent also recollects that Abraham Shockey and his father built a saw mill and grist mill on the land occupied by Thomas Blair, in Walden's survey, as early as the year 1800; after which Robert Pogue, or Pogue and Bodley, owned or occupied the same, and sold the same to Tilton and Huston, who sold the same to Gibson Hambrick, who sold the same to Benjamin Fitzgerald, who sold the same to Thomas Blair, who now occupies and lives on the same. This deponent further states, that he has lived generally in the neighborhood of the aforesaid land ever since the year 1795, and don't know or recollect of any tenant or occupant on any of the lands named in his deposition, except the parties therein named; further this deponent saith not.

ELI METCALFE.

STATE OF KENTUCKY, *Mason county, sct:*

The foregoing deposition was this day taken, subscribed, and sworn to before the undersigned, an acting justice of the peace for said county, at the time and place and for the purpose stated in the caption thereof.

Given under my hand, this 22d September, 1845.

LEROY DOBYNS, *J. P.*

The following are copies of depositions read by the defendants, to wit:

Deposition of D. L. Runyan.

The deposition of David L. Runyan, taken at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday, the 29th day of April, 1836, pursuant to notice, to be read as evidence in a suit now depending in the Federal court, seventh circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith: That he was living on the land of Jonathan Rose at the time he sold the said land to Jonathan H. Rose, which was previous to the first day of March, eighteen hundred and fourteen; and this deponent further saith, that Jonathan H. Rose remained in the possession of the land until about the year 1826, at which time he sold the said land to John N. Proctor, who has since had the land in possession, and is now living on the same; and further this deponent saith not.

DAVID L. RUNYAN.

STATE OF KENTUCKY, *Fleming county, sct:*

I, Wm. B. Blair, one of the commonwealth's justices of the peace in and for said county, do certify, that the foregoing deposition of David L. Runyan was taken, subscribed, and sworn to before me, at the time and place and for the purpose mentioned in the caption.

Given under my hand, this 29th day of April, 1836.

WM. W. BLAIR.

Deposition of James Tebbs.

The deposition of James Tebbs, taken at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Saturday, the 30th day of April, 1836, pursuant to notice, to be read as evidence in a suit now depending in the Federal court, seventh circuit, Kentucky district, wherein John N. Proctor is complainant, and Ambrose Walden defendant. This deponent being of lawful age, and first duly sworn, deposeth and saith: That he is a neighbor to John N. Proctor; that he came into the neighborhood in 1815, and that he was acquainted with Jonathan H. Rose, and purchased wheat of him in the fall of eighteen hundred and sixteen; that at that time he had possession and lived upon the farm on which John N. Proctor now lives; and that he understood both from Jonathan H. Rose and his father, that Jonathan H. Rose had purchased and was the rightful owner of said farm, and that he remained in possession of the same until he sold to John N. Proctor, which was about the year 1826; and further this deponent saith not.

JAMES TEBBS.

Deposition of Elijah Johnson.

Also the deposition of Elijah Johnson, taken at the same time and place, and to be read as evidence in the same suit. This deponent

being of lawful age, and first duly sworn, deposeth and saith: That he is a neighbor to John N. Proctor, and was acquainted with Jonathan H. Rose, who formerly owned the farm on which said Proctor now lives; that he understood from Jonathan H. Rose and his father, both about the year 1816, that Jonathan H. Rose had purchased the farm; and he further states, that said Jonathan H. Rose remained in possession and exercised ownership over the same until he sold to John N. Proctor, which was about the year 1826, and that said Proctor has remained in possession ever since; and further this deponent [saith not.]

ELIJAH JOHNSON.

FLEMING COUNTY, *Kentucky, sct:*

I, Wm. W. Blair, one of the commonwealth's justices of the peace in and for said county, duly commissioned, sworn, and acting as such, do certify, that the foregoing depositions of James Tebbs and Elijah Johnson were taken, subscribed, and sworn to before me, at the time and place and for the purpose mentioned in the caption. I further certify, that I am not of counsellor, attorney, or in any wise related to either of the parties, and that I am not interested either directly or indirectly in the event of the cause.

Given under my hand, this 30th day of April, 1836.

WM. W. BLAIR, *J. P. F. C*

Notice to take depositions.

Mr. Edward Blackburn, or Robert Wickliffe, attorney for Ambrose Walden, will take notice that we will attend at the house of John N. Proctor, in the county of Fleming, and State of Kentucky, on Friday, the 29th instant, between the hours of 8 o'clock, A. M., and 5 o'clock, P. M., and continue from day to day until the business is completed, to take the depositions of David L. Runyan, and others, to be read as evidence in a suit now pending in the Federal court, seventh circuit, Kentucky district, wherein we are complainants, and Ambrose Walden defendant, at which time and place you may attend if you please.

April 23d, 1836.

JOHN N. PROCTOR,
THOMAS BLAIR.

"Endorsed"—

FLEMING COUNTY, *sct:*

I, Wm. W. Blair, one of the commonwealth's justices of the peace in and for said county, do certify, that James P. Patton, this day appeared before me, and made oath that he served the within notice on Edward Blackburn, on Tuesday, the 26th day of April, 1836.

Given under my hand, this 29th day of April, 1836.

WM. W. BLAIR, *J. P. F. C.*

Deposition of Athelston Owens.

The deposition of Athelston Owens, taken at the clerk's office in the town of Washington, and county of Mason, and State of Kentucky, to

be read in a suit now depending in the circuit court of the United States for the district of Kentucky, wherein A. Walden's heirs are complainants, and Bodley's heirs and Pogue's heirs, and others, are defendants. The deponent being aged fifty years, and duly sworn, deposes and says:

Question by def't. State whether or not the land claimed and possessed by each of the def'ts is or is not within the boundary of the patent of 10,000 acres, which issued to Tebbs, &c.; and if any part be, and part be not, within the boundary of that patent, state which of the defendants are, and which are not, within that patent; and state also, if you know, what part of the land in contest is, and what part is not, within the boundary recovered by Walden in the ejectment referred to in the pleadings in this cause; and which of the defendants claim and are possessed of the land in contest ouside of the land recovered in said ejectments; state who are the children and heirs of Thos. Cash, deceased; who the children and heirs of Dale Carter, deceased; and whether the wife of the defendant, Tebbs, is not a child and heiress of the said Dale Carter, deceased.

Answer by the deponent. All the land held by the defendants, James Tebbs, Philip Palmer, William Jones, and Thomas Blair, involved in this controversy, lies within the survey of 10,000 acres granted to Robert Rutherford, assignee of Henry Crutcher, and to Willoughby Tebbs, heir at law to John Tebbs, deceased, by survey bearing on the 14th day of March, 1784, as will more fully appear by reference to the connected plat herewith retained, and the report thereof, marked "plat No. 4," which this deponent refers to and makes part of this his deposition; as to what land within the controversy, the other defendants herein claim title to, this deponent is unadvised as to its boundary, and cannot therefore state whether it lies within the 10,000 acre survey or not. The said plat correctly represents the relative positions of the claim as reported.

The line (i. 5), is what is commonly called in its neighborhood Craig's line, and the land within Walden's claim of 1,333 acres, lying on the S. W. side of said lines, is that for which the recovery was had at law. The figures p, q, r, s, P, on the plat, shows all the land held by these defendants, or any of them, (and which is held by the defendant, Blair,) lying within the land recovered in ejectment. Of the heirs of John Cash and Thomas Cash, this deponent knows nothing. He has been informed, and it is matter of common report, that the wife of James Tebbs is the daughter and only child of Dale Carter, deceased, late of this county.

Question by complainants by interrogatory. Do you know Lewis Craig first settled Jonathan Rose and others, under Walden's claim; and were they not settled under Craig as early as 1793, and not the tenants settled by Craig afterwards purchased of Bodley, Hughes, &c.? State all you know or have heard the tenants say on the subject.

Answer by deponent. Several years ago I knew an old man by the name of Lewis Craig, whether the same mentioned in the interrogato-

ry or not I do not know; nor do I know when the tenants upon the land were settled by him; I have been informed, and deeds in writing show, that John Cash and Thomas Cash took conveyances from Bodley, Hughes, and Pogue, in the way my report referred to shows; as to what the tenants or defendants have stated on the subject, I have no special recollection, even if it were evidence; and further this deponent says nothing.

ATHELSTON OWENS.

The following is the plat referred to in the above deposition.

Deposition of L. Dobyns.

Also the deposition of Leroy Dobyns, taken at the same time and place, and for the same purpose, as that of Athelston Owens. The deponent being *aged* about fifty-eight years of age and first duly sworn, deposses and says:

Question by defendants. State all you and each of you know in regard to the matters in contest in this case; state how long the land in contest, or any part thereof, has been possessed by the defendants, and each of them, and the person or persons under whom they respectively claim, and under what title the defendants respectively claim; and all you know in regard to their claim, and the contracts under which they claim; and if any of them claim under the heirs of any person or persons, state whether the person under whom they claim as heirs are in fact the heirs of the person or persons to whom they profess to be heirs; and state the manner such person or persons professing to be heirs are heirs; whether they are the children of such person, or in what manner related to such person.

Answers. That portion of the land in possession of the defendants James Tebbs, has been in his possession for near now fifteen years, and was in that of Dale Carter, (the father of Mrs. Tebbs, wife of said James, who was at the time of said Carter's death his only heir at law,) for near fifteen years before his death, except fifty-one acres and a half purchased by said Tebbs of Robert Pogue, in the spring of the year 1825; which said fifty-one acres and a half was in the possession of Pogue, under whom Tebbs claims the same as early as 1819. Tebbs claimed all of said land under Dale Carter, save the fifty-one and a half acres aforesaid, which he claimed as above under Pogue; and under whom Carter claims I do not now recollect, if I ever knew; about the contracts under which Tebbs claimed said land, I knew nothing save as to the fifty-one and a half acres, for which Tebbs holds Pogue's bond, dated 8th of December, 1815, for fifty-one and a half acres, and which bond is now before me, and is executed by Robert Pogue to Dale Carter, signed by himself, and by Thomas Bodley by said Pogue, as his attorney; and which bond and the signatures thereto I believe to be in the handwriting of said Robert Pogue, having frequently seen him write, and across which this deponent has written his name as the means of identifying the same, and which is made part of this his deposition. I believe that

Elizabeth Tebbs, wife of James Tebbs, is the sole heir at law of Dale Carter, deceased.

The land claimed by William Jones has been in his possession since the fall of 1831, and I understand that he purchased of, and claimed the same, under James Tebbs, who procurred the possession thereof from the heirs of John Cash, to wit: Elizabeth Cash, widow of said John, Archibald Cash, Catherine Thornton, wife of Richard Thornton, Thomas Cash, William Cash, and John Cash, whom I believe to be the only children and heirs at law of said John Cash; the said John Cash having been in possession of said land, to my knowledge, for quite twelve years before his death, he having departed this life in or about the year 1822; I do not know under what title Cash claimed said land. Thomas Blair, one of the defendants, has been in possession of the land claimed by him since the spring of 1832. He claims under Benjamin Fitzgerald, who claimed under John Hambrick, who claimed under Richard and John Huston, and the two latter under Robert Pogue; Hambrick had the possession of the same from eight to ten years; how long it was in the possession of others the deponent cannot say. John *Proctor*, one of the defendants, has been in possession of the land claimed by him about sixteen years at least; Proctor claimed under Jonathan Rose; how long the latter had been in possession cannot say.

Philip Palmer has been in possession of the land claimed by him since the year 1831, and he claims the same under Thomas, George, and John Cash, the reputed heirs of Thomas Cash, or his heirs, I cannot certainly say; but his heirs had the same for near thirty years. Deponent further states, in answer to the second interrogatory propounded him as the same is propounded Athelston Owens, that he knows nothing as to what patent bounds said several tracts spoken of by him as claimed by the defendants lie; he has already stated who are the children and heirs at law of John Cash, deceased, and of Thomas Cash, deceased, and also of Dale Carter.

Third. State as near as you can how long the land now in contest and possessed by the respective defendants have been possessed by each of them, and others [under] whom they claim; and how long there has been a continued possession of each parcel by the respective defendants, and others under whom they claim; and all you know, and each of you know, in regard to the possession and title of each of the defendants, and the continuance of that possession by them respectively, and all others through whom they claim. State the whole truth, and all you know in regard to the matters and things in contest.

Answer. I have stated all I know in relation to the matters in said interrogatory contained in answer to the first.

Fourth. State all you know in regard to the improvements of the land claimed by each and all of the defendants, the value of each improvement, and by whom made, and when made.

I cannot answer as to the time when many of the improvements were made, nor by whom, nor as to their value, except as hereinafter stated; James Tebbs, Dale Carter, cleared some fifty odd acres worth, perhaps,

from twelve to fifteen dollars, meaning thereby to take it from a state of nature, and to fence and to put it in its present condition; on the land claimed by Jones there is some sixty acres cleared, but by whom I cannot say, worth perhaps as much per acre as that of Tebbs and Carter; as to the nature, extent, and character on Palmer's land I cannot say certainly; as to the amount of Blair's I cannot say; there is a water grist mill and hewed log house thereon; there are buildings for each of the tenements claimed by the defendants, except the part of Tebbs, but in what they all consist, or their present value, I cannot speak certainly.

Five. State who are the heirs of Drake, also who are the heirs of Robert Pogue now living; if any are dead, when they died; who are the heirs of any who have died.

Answer. John D. Taylor, Robert Taylor, and Eliza Sandridge are reputed grand children of Abraham Drake, deceased, and the only ones now alive. The heirs of Robert Pogue are Wm. L. Pogue, Edwin Pogue, and Andrew William Mackey, the second one of whom recently died, leaving as his heirs at law Eli M. Pogue, Elizabeth Jane Pogue, Robert Pogue, Franklin Pogue, Amanda Pogue, Maria Pogue and his wife, Maria Pogue, Samuel Gannison, Robert Gannison, John O. Gannison, and Gideon B. Gannison, children of Ann Eliza Gannison, daughter of Robert Pogue, deceased, and a child of John Pogue, but the name I do not know.

Question by complainants. First. Do you know Lewis Craig first settled Jonathan Rose and others under Walden's claim; and were they not settled under Craig as early as 1793; and not the tenants settled by Craig afterwards purchased of Bodley, Hughes, &c.? State all you know or have heard the tenants say on the subject. Do not the defendants, Benjamin Umstead, Thomas Blair, William Jones, and Philip Palmer, hold and occupy land deeded to Walden in the suit of Pogue and Bodley, &c., against Walden? State all you know or have heard the tenants state on the subject.

Answer. I do not know as to Lewis Craig having settled Jonathan Rose or others under Walden's claims; as to the settlement under Craig, or the purchases of his tenants of Bodley & Hughes, I know nothing, except as hereinafter stated. I have heard Umstead say he purchased of John Johnson; as to the fact whether Blair, Umstead, Jones, and Palmer occupy land deeded to Walden in the suit of Pogue & Bodley against Walden I cannot say. I have heard the tenants state many things touching their claims, and the manner *and the manner* of holding, and under whom, but what these statements are I cannot now recollect; and further saith not

LEROY DOBYNS.

Deposition of E. Lynn.

Also the deposition of Ebenezer Lynn, taken at the same time and place, and for the same purpose as that of Leroy Dobyns. Deponent being of lawful age, and first duly sworn, in answer to the first inter-

rogatory as put to Dobyns by defendants, says: The land in possession of Tebbs I know was in the possession of Dale Carter (except the 51½ acres spoken of by Leroy Dobyns) from the year eighteen and one, or eighteen hundred and two, until his death in the spring of 1828. James Tebbs, who married his daughter, and only child alive at the time of his death, has been in possession ever since, until very recently; Dale Carter claimed of, and bought of, Gen'l Robert Pogue; the 51½ acres was purchased, as I have understood, of Robert Pogue in the year 1825 by James Tebbs, and had been in possession of said Pogue from the year 1808, or about that time. I do not know certainly under whom Pogue claimed, but I always understood that he claimed under Tebbs, &c. The land claimed by Jones was first in the possession of Isaac Shockey as early as 1803 or 1804, and he remained in possession of the same for near four or five years, claiming under Rob't Pogue; then John and Thomas Cash took possession of said land, claiming under Robert Pogue, and they and their heirs remained in possession until 1831, and was succeeded by William Jones, the present defendant, who remained in possession until about the year 1835. As to the land claimed by Thomas Blair in the spring of 1798, a man by the name Abraham Shockey lived upon said land, but under whom he held this deponent does not know; Robert Pogue succeeded him in the possession of said land about the year 1806 or '7, and he and those claiming under him have been in possession ever since; the present tenant, Blair, having been in possession of the same since the year 1832, to the best of my knowledge; Pogue claiming under Tebbs & Co.; as to the land of Philip Palmer, it was in the same condition as that of William Jones, it being part of the land belonging to, and possessed by, John and Thomas Cash; it being that portion which Palmer purchased, as this deponent has understood, of the heirs of Thomas Cash; as to the land claimed by Jno. N. Proctor, it was occupied by Jonathan Rose in 1798. I have understood he settled there under Craig, and remained in possession of the same until Proctor purchased of him.

In answer to the 2d interrogatory put by defendants to Dobyns deponent says, that as to what boundaries the land respectively claimed by the defendants lies he knows nothing. Leroy Dobyns has truly stated, so far as this deponent knows, who are the children and heirs at law of Thomas Cash, John Cash, and Dale Carter, deceased. The deponent, for answer to the 3d interrogatory, replies that he has already answered the same, as fully as he can, in his answer to the first one put him herein. Deponent states, in answer to 4th question, that he cannot speak with certainty as to the nature, extent, and character of the improvements made by the defendants, or any of them. Deponent, in any answer to the first and only interrogatory put by complainants to Leroy Dobyns, answers and says that he knows nothing of his own knowledge as to whom Rose settled under; he has understood that he settled under Lewis Craig; as whom other tenants settled under he knows nothing; whether any tenants purchased of Bodley, Hughes, &c., he

knows nothing, save that he has heard Jonathan Rose purchased of Bodley; and, also, whether Umpstead, Blair, Jones, and Palmer hold and occupy land deeded to Walden in the suit of Pogue, Bodley, &c., against Walden, he knows nothing. I have conversed with some of the tenants, but I cannot now state what they said; and further saith not

EBENEZER LYNN.

Deposition of Joseph Duncan.

Also the deposition of Joseph Duncan, taken at the same time and place, and for the same purpose. This deponent, aged about forty-nine years, and first duly sworn, in answer to first interrogatory put by defendants to Dobyns, answers and says, he cannot state anything more than stated by Ebenezer Lynn, and he adopts that as his answer to the said interrogatory.

In answer to the second interrogatory by defendants, says, that he believes that the lands claimed by and in possession of defendants, is within Tebbs and Co's ten thousand acre patent, having been at the stone corner spoken of by Surveyor Owens, and this deponent as he understands the extent of the recovery in ejectment by Walden, states that none of the land occupied by the defendants Tebbs, Jones, and Palmer, is within the recovery in ejectment, and only part of Blair; he concurs with the other witnesses as to who are the heirs of Drake, John and Thomas Cash, and Dale Carter.

In answer to third interrogatory, witness states that he cannot answer, save as it is answered in that of Ebenezer Lynn, and he refers to and adopts the same as an answer to said third interrogatory.

Deponent answers to the fourth interrogatory, that Tebbs has cleared to his knowledge some ten acres, worth twelve or fifteen dollars per acre for clearing, &c. The improvements on Jones' land consist of about sixty acres, a good hewed log-house, stable and corn crib, kitchen and smoke-house, some portion of which was cleared by Isaac Shockey, the remainder by the Cashes, the clearing of which is worth as much as that of Tebbs; and in answer to this interrogatory of the complainants, deponent says Rose first settled there, but under whom he settled he does not know, or if he ever heard, if he did, he has forgotten; he cannot answer the remainder of the said question, nor can he now state what he has heard the tenants say; and further saith not

JOSEPH DUNCAN.

KENTUCKY, *sct*:

I certify that the foregoing depositions of Athelston Owens, Leroy Dobyns, Ebenezer Lynn, and Joseph Duncan were taken, subscribed, and sworn to before me, at the clerk's office in Washington, on this day.

Given under my hand this 12th day of October, 1842.

MARSHALL KEY.

Deposition of Henry Bruce.

The deposition of Henry Bruce, senior, and others, taken at the residence of Thomas Blair, in the county of Mason, to be read as evi-

dence in a suit now pending in the circuit court for the United States, to be holden in Frankfort, Ky., wherein Ambrose [Walden's] heirs are plaintiffs, and Thomas Blair and others are defendants. Depositions taken pursuant to the annexed notice. The deponent, of lawful age and first duly sworn, deposeth that—

Question by Blair. State according to the best of your recollection when Robert Pogue took possession of the mill and premises now in my possession.

Answer. Upon an examination of my books, I find an entry of the purchase of a desk and two tables of Abraham Shockey, who then lived at the mill now owned by Thomas Blair; the entry in the book is made upon the fourth February, 1803; my impression is that Shockey had then, (at the date of the above entry,) sold the mill and premises to Robert Pogue, and he, Shockey, was then preparing to remove, and from the above circumstance my impression is that Robert Pogue obtained of the mill and premises some time during the year 1803. In the foregoing part of the deposition, I have stated that Shockey *sold* to Pogue; I may use the word sold improperly, for I cannot say nor do I mean to be understood that Pogue purchased of Shockey, but I merely mean to say that Pogue succeeded Shockey in the possession of the mill; and further saith not HENRY BRUCE.

Deposition of Elizabeth Patton.

Also the deposition of Elizabeth Patton, taken at the same time and place, and for the same purpose. Deponent, first duly sworn, deposeth that—

Question. State at what time Robert Pogue obtained possession of the mill and premises now in my possession.

Answer. I was married in 1804, in the State of Pennsylvania, and when I returned to Kentucky one James Patton was then (in the year 1804,) attending to the mill for Robert Pogue, as his tenant, according to the best of my recollection; I cannot state when Pogue obtained possession; and further deponent saith not.

ELIZABETH PATTON.

Deposition of W. P. Stout.

Also the deposition of Wm. P. Stout, taken at same time and place, and for same purpose, as the foregoing deposition of Eli Metcalfe. The deponent being of lawful age, and first duly sworn, deposeth and saith, that he knew the farm on which Benjamin Umpstead now lives, and that John Bell resided upon the same previous [to] the year 1808, and I believe Bell sold the premises to John Johnson, and Johnson sold to Umpstead, and Umpstead settled upon the land in 1811, and remained in possession ever since; and further this deponent saith not.

WILLIAM P. STOUT.

Deposition of Robert Ewing.

The deposition of Robert Ewing, taken at the same time and place, and for the same purpose. The deponent being of lawful age and duly sworn, deposeth and saith—

Say, if you can, at what time Robert Pogue had possession of the premises on which Thomas Blair now lives.

I lived with James Patton in the year eighteen hundred and , who then lived upon the premises, who was tenant under Robert Pogue, and understood from said Patton, he, Patton, had lived on the premises the year previous; the deponent further states that John Bell, in the year 1805, lived upon the premises upon which Benjamin Umpstead now lives, and that Bell sold to Johnson as I understood, and further this deponent says not. ROBERT EWING.

Notice to take depositions.

Edward Blackburn, esq., agent for the heirs of Ambrose Walden, will please to take notice, that we shall on the 11th day of October next, at the hour of 9 o'clock, A. M., and 5 o'clock, P. M., at the house of Thomas Blair, in the county [of] Mason, State of Kentucky, proceed to take the depositions of Robert Ewing and others, to be read as evidence in a suit now depending in the circuit court of the United States, to be holden at Frankfort, Ky., wherein Ambrose Walden's heirs are complainants, and we are defendants, where you may attend if you choose.

22d of September, 1845.

THOMAS BLAIR & OTHERS.

Endorsed.—I acknowledge the service of the within notice, this 22d day of September, 1845.

E. M. BLACKBURN.

MASON COUNTY, *State of Kentucky, set:*

The foregoing depositions *was* this day taken, subscribed, and sworn to before the undersigned, a justice of the peace for said county, at the time and place, and for the purpose stated in the caption thereof.

Given under my hand, this 11th October, 1845.

LEROY DOBYNS, *J. P.*

Deed—Johnson and wife to Umstead.

This indenture, made this thirtieth day of March, eighteen hundred and eighteen, between John Johnson and Lucy, his wife, of the county of Mason, and State of Kentucky, of the one part, and Benjamin Umstead, of the county and State aforesaid, of the other part, witnesseth: That the said John Johnson, for and in consideration of the sum of six hundred and twenty dollars, current money, to him in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, to the said Benjamin Umstead, his heirs and assigns, forever, a certain tract or parcel of land, situate, lying, and being in the county of Mason, on the waters of Johnson's fork, bounded as follows, viz: Beginning at a black oak, box, elder, and elm; running thence south 29½° west, 1577 poles, to a stake; thence north 62° west, 135 poles, to an ash sapling,

marked as a corner tree with a knife; thence north 50° east, 171 poles, to a large red oak standing in the field of Clift, also a large red oak stump standing in the same; thence south 61° east, 75 poles, to the beginning, containing one hundred and three acres and sixty poles. To have and to hold the said bargained premises, and every part and parcel thereof, to his only proper use and benefit and behoof; the said John Johnson shall and will warrant and forever defend the same against himself and his heirs, and any other person or persons claiming by, through, or under him or them; but in case the land above described, or any part thereof, should be lost or taken for any superior or better claim than that of said Johnson's, then, and in that case, the said Johnson is to refund the purchase money at the rate of six dollars per acre, without interest for the land so lost or taken.

In testimony whereof the said John Johnson and Lucy, his wife, have hereunto set their hands and seals, the day and year first above written.

JOHN JOHNSON, [SEAL.]
LUCY JOHNSON. [SEAL.]

Signed, sealed, and acknowledged in presence of—

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, do certify, that this deed of conveyance from John Johnson and Lucy, his wife, to Benjamin Umstead, was this day produced in my office and acknowledged by the said John Johnson and Lucy, his wife, to be their acts and deeds; and the said Lucy, wife of the said John Johnson, being examined separate and apart from her husband, and having the said deed fully explained to her, did freely and voluntarily, without the threats or persuasion of her said husband, relinquish her dower and right of dower in and to the land and premises conveyed in and by said deed, and was willing that the same might be recorded; whereupon the same is duly recorded in my said office.

Given under my hand, this 30th day of March, 1818.

MARSHALL KEY.

Deed—Roses to Proctor.

This indenture, made this 22d day of February, in the year of our Lord one thousand eight hundred and twenty-eight, between Jonathan H. Rose and Jonathan Rose and Elizabeth, his wife, of the county of Fleming, and Commonwealth of Kentucky, on the one part, and John N. Proctor, of the county of Fleming, and Commonwealth [of Kentucky,] of the other part, witnesseth: That the said Roses, for and in consideration of the sum of sixteen hundred and twenty-five dollars, current money of Kentucky, to Jonathan H. Rose in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and confirm, unto the said Proctor, his heirs and assigns, all that tract or parcel of land, situate and being in the county of Fleming, on the waters of the Flat

fork of Johnson, containing one hundred and thirty and a quarter acres, and bounded as follows, to wit: Beginning at a white ash and buckeye standing on the north side of a branch southwest corner of the land of Tyffe's heirs; thence north 62½° west, 158 poles, to a buckeye, two sugar trees, and black oak; thence north 21° east, 44 poles, to a black ash and hickory, on the bank of the creek; thence north 57½° east, 31 3/100 poles, to a stone on the bank of the Flat fork of Johnson; thence north 38° east, 85 3/10 poles, to a hickory, both the last named corners being corners of Pogue's mill tract; thence south 62½° east, 110 poles, to two blue ashes and a sugar tree; thence south 21° west, 158 poles, to the beginning, being the same land conveyed by Jonathan Rose to Jonathan , by deed, dated 2d July, 1827, together with all and singular the premises thereunto belonging, or in any wise appertaining; to have and to hold the land hereby conveyed, and the appurtenances, unto the said Proctor, his heirs and assigns, forever; the said Jonathan Rose only conveying without warranty a life estate, which he held by virtue of a lease from said Jonathan H. Rose, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said Proctor, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, so far as to refund the purchase money, without interest, in case said land should be lost by a better claim than the one hereby conveyed, does and will forever defend by these presents.

In witness whereof the said Jonathan H. Rose and Jonathan Rose and wife, have hereunto set their hands and seals, the day and date first above written.

JONATHAN H. ROSE, [SEAL.]
JONATHAN ROSE. [SEAL.]

FLEMING COUNTY, *sct:*

February 22d, 1828.

As deputy clerk of the Fleming county court, I certify, that this deed, from Jonathan H. and Jonathan Rose to John N. Proctor, was this day produced before me, and acknowledged by said Roses to be their act and deed, and the same is duly recorded.

JAMES CRAWFORD, *D. C.*

FLEMING COUNTY, *sct:*

April 29th, 1836.

A true copy. Attest: G. M. STOCKTON,
Clerk pro tem. Fleming county court.

Deed—Rose to Rose.

This indenture, made this 2d day of July, in the year of our Lord one thousand eight hundred and twenty-seven, between Jonathan Rose, of the county of Fleming, and Commonwealth of Kentucky, on the one part, and Jonathan H. Rose, of the county of Fleming, and commonwealth aforesaid, of the other part, witnesseth: That the said Jonathan Rose, for and in consideration of the sum of seven hun-

dred dollars, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said Jonathan H. Rose, his heirs and assigns, all that tract or parcel of land situate and being in the county of Fleming, on the waters of the Flat fork of Johnson, containing one hundred and thirty and a quarter acres, and bounded as follows, to wit: beginning at a white ash and buckeye, standing on the north side of a branch, S. W. corner of the land of Tyffe's heirs; thence N. 62½ W., 158 poles, to a buckeye, two sugar trees, and black oak; thence N. 21° E., 44 poles, to a black ash and hickory in the bank of the creek; thence N. 57½° E., 31 $\frac{8}{10}$ poles, to a stone on the south bank of the flat fork; thence N. 38° E., 85 $\frac{4}{10}$ poles, to a hickory (both the last named corners being corners of Pogue's mill tract;) thence S. 62½° E., 110 poles, to two blue ashes and a sugar tree; thence S. 21° W., 158 poles, to beginning; being the same land conveyed by Bodley and Pogue to said Jonathan Rose, together with all and singular the personal property in the possession of and now owned by said Jonathan Rose, together with all and singular the premises thereunto belonging, or in any wise appertaining. To have and to hold the land hereby conveyed, and the appurtenances, unto the said Jonathan H. Rose, his heirs and assigns forever; and the said Jonathan Rose, for himself, his heirs, executors and administrators, the aforesaid tract of land and premises, unto the said Jonathan H. Rose, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, claiming through or under him, but against no other whatsoever, does and will forever defend by these presents.

In witness whereof the said Jonathan Rose has hereunto set his hand and seal the day and date first above written.

JONATHAN ROSE, [SEAL.]
ELIZABETH ROSE. [SEAL.]

Acknowledged in the presence of—

FLEMING COUNTY, *sct:*

July 2d, 1827.

As deputy clerk of the Fleming circuit court, I certify, that this deed, from Jonathan Rose to Jonathan H. Rose, was this day produced before me, and acknowledged by said Jonathan Rose to be his deed, and the same is duly recorded. JAMES CRAWFORD, *D. C.*

FLEMING COUNTY, *sct:* *October 18th*, 1828.

As deputy clerk of the Fleming county court, I certify, that this deed, from Jonathan Rose and Elizabeth, his wife, to Jonathan H. Rose, was this day produced before me, and the said Elizabeth being examined by me privily and apart from her said husband, declared that she did freely and willingly seal and deliver said *said* writing, and wished not to retract it, and acknowledged said writing, again shown and explained to her, to be her deed, and consenteth that the same may be recorded, which is done.

G. M. STOCKTON.

Bond—Pogue to Tilton and Huston.

Know all men by these presents, that I, Robert Pogue, of the county of Mason, and State of Kentucky, doth bind myself, my heirs and assigns, unto Richard Tilton and John Huston, their heirs or assigns, of the county and State above said, in the penal sum of four thousand dollars; which payment, well and truly to be made, I bind myself, my heirs and assigns, by these presents, unto the said Richard and John above mentioned, their heirs and assigns.

In witness whereof I have hereunto set my hand and seal, this 28th day of April, eighteen hundred and thirteen.

[SEAL.]

In presence of—

The condition of the above obligation is such, that if the above bound Robert Pogue shall well and truly make, and cause to be made, a good and sufficient warranty deed, unto the above mentioned Richard Tilton and John Huston, their heirs and assigns, for the grist mill he now owns on the Flat fork, with fifty acres of land thereunto belonging, including the lot on which the mill is erected, and the balance to be laid off adjoining Cash and Drake's line, so as to lie in a good form, and warrant and defend the said mill and land from himself, his heirs and assigns, and all other persons forever, then this obligation to be void, otherwise to remain in full force and virtue.

Witness my hand and seal, this date above.

ROBERT POGUE. [SEAL.]

AARON H. YOUNG,
JOHN H. POGUE.

A copy. Attest: MARSHALL KEY, *C.*

April 13th, 1818.

Being informed that Richard Tilton and John Huston has sold the mill mentioned in the within agreement, to Gibson Hambrick, and I do hereby agree to convey the title to said Hambrick, when he produces to me this bond.

ROBERT POGUE.

JOHN H. POGUE.

A copy. Attest: MARSHALL KEY, *Clerk.*

Agreement—Huston and others with Hambrick.

Memorandum of an agreement, made and agreed on between John Huston and Richard Tilton, of the one part, and Gibson Hambrick, of the other part, both of the county of Mason, and State of Kentucky, witnesseth: That the said John Huston and Richard Tilton hath this day bargained and sold their mill, and fifty acres of land, lying on the flat fork of Johnson, and to lie in the form as described in Pogue's bond to Huston and Tilton, for the sum of two thousand dollars, payable in four years, in the following manner: and the said Gibson Hambrick, on his part, promises to pay the said John Huston three hundred and thirty-three and a third dollars, on or before the first day of July,

1817; also three hundred and thirty-three and one-third dollars on the first day of July, 1818; also three hundred and thirty-three and one-third dollars on the first day of July, 1819, one thousand dollars in all, to said Huston; also he agrees to pay to the above said Richard Tilton five hundred dollars on the first day of July, 1819, with lawful interest thereon from the first day of July, 1816, till paid; also the said Hambrick agrees to pay to the said Tilton five hundred dollars on the first day of July, 1820, with lawful interest thereon till paid, making one thousand dollars in all to said Richard Tilton, two thousand dollars in the whole to said Huston and Tilton; and when the before mentioned money is paid, the *the* Huston and Tilton is to give same Gibson Hambrick Pogue's bond *for the bond* for the title, with an order on said Pogue to convey the same to said Hambrick, with a receipt from said Pogue that the two thousand [dollars] has been paid to him for the mill; and said Hambrick agrees to take said Pogue for the title of said mill and land.

Witness all our hands and seals, this 13th day of April, 1816.

JOHN HUSTON, [SEAL.]
RICHARD TILTON, [SEAL.]
GIBSON HAMBRICK. [SEAL.]

Attest: JAMES N. WILSON.

For value received, I assign the within bond to Benjamin Fitzgerald. Witness my hand and seal, this *this* 21st day of April, 1828.

G. HAMBRICK. [SEAL.]

A copy—attest: MARSHALL KEY, *Clerk*.

Deed—Robert Pogue to Benjamin Fitzgerald.

This indenture, made the 16th day of August, in the year eighteen hundred and twenty-eight, between Robert Pogue and Jane, his wife, of the county of Mason, and State of Kentucky, of the one part, and Benjamin Fitzgerald, of the county and State aforesaid, of the other part, witnesseth: That the said Robert Pogue, for and in consideration of the sum of two thousand dollars, to him in hand paid by John Huston and Richard Tilton, agreeably to the bonds filed in the suit in chancery, Gibson Hambrick against Richard Tilton's administrator and others, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Benjamin Fitzgerald, his heirs, and assigns, forever, all that tract or parcel of land situate in the county of Mason, on the flat fork of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at a black ash and hickory, on the bank of the flat fork; thence north 20° 30′ east, 114 poles, to a hickory and dog wood; thence north 62° west, $88\frac{6}{10}$ poles, to a haw bush, red oak, sugar tree, box elder, and hickory, corner to James Morris; thence, with his line, north 27° east, 35 poles, to a stake in said line; thence south 62° 30′ east, 130 poles, to a stone in John Cashe's line, in the mouth of a

branch between two hickories; thence south 4° 30′ east, 41 poles, to an old white oak, iron wood, and dog wood, in Rose's line; thence, with the same, north 62° west, 17 poles, to his corner, a hickory; thence south 38° west, 85 poles, to a stone on the south side of the fork; thence south 57° 30′ west, $31\frac{6}{10}$ poles, to the beginning, containing fifty acres, and including the mill now in the possession of Gibson Hambrick. To have and to hold the above described tract of land, and every part and parcel thereof, together with the mill, and the appurtenances thereunto belonging, or in any wise appertaining to the same, unto the said Benjamin Fitzgerald, his heirs, and assigns, forever, to the only proper use, benefit, and behoof of him, the said Benjamin Fitzgerald, and his heirs and assigns. And the said Robert Pogue, for himself, his heirs, &c., doth covenant, to and with the said Benjamin Fitzgerald, and his heirs, &c., that he will warrant and forever defend the above described tract of land from the claim or claims of all and every person or persons whatever.

In witness whereof, the said Robert Pogue and Jane, his wife, have hereunto set their hands and seals, the day and year first written.

ROBERT POGUE, [SEAL.]
JANE POGUE. [SEAL.]

STATE OF KENTUCKY, *Mason county, set:*

I, Marshall Key, clerk of the county court for said county, certify that this deed of conveyance from Robert Pogue and Jane, his wife, to Benjamin Fitzgerald, was this day produced in my office, and acknowledged by the said Robert Pogue to be his act and deed, for the purpose therein mentioned; and the same is duly recorded in my said office.

Given under my hand, this 16th day of August, 1828.

MARSHALL KEY.

Co. deed—Fitzgerald to Blair.

This indenture, made the 20th day of September, eighteen hundred and thirty-two, between Benjamin Fitzgerald, of the county of Daviess, and State of Indiana, of the one part, and Thomas Blair, of the county of Mason, and State of Kentucky, of the other part, witnesseth: That the said Benjamin Fitzgerald, for and in consideration of the sum of six hundred dollars, to him in hand paid, or secured to be paid, by the said Thomas Blair, to him, the said Benjamin Fitzgerald, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, sell, alien, and convey, unto him, the said Thomas Blair, all that tract or parcel of land, situate, lying, and being in the county of Mason, containing fifty acres, more or less, and bounded as follows, to wit: Beginning at a black ash and hickory, on the flat fork of Johnson's fork; thence north 20° 30′ east, 114 poles, to a hickory and dog wood; thence north 62° west, $88\frac{6}{10}$ poles, to a haw bush, red oak, and sugar tree, box elder, and hickory, corner to James Morris; thence, with his line, north 27° east, 33 poles, to a stake in said line; thence south 60° 30′ east, 131 poles, to a stone in John Cash's line, in the mouth of a branch between two hickories; thence south 4° 30′ east, 41 poles, to

dred dollars, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said Jonathan H. Rose, his heirs and assigns, all that tract or parcel of land situate and being in the county of Fleming, on the waters of the Flat fork of Johnson, containing one hundred and thirty and a quarter acres, and bounded as follows, to wit: beginning at a white ash and buckeye, standing on the north side of a branch, S. W. corner of the land of Tyffe's heirs; thence N. 62½ W., 158 poles, to a buckeye, two sugar trees, and black oak; thence N. 21° E., 44 poles, to a black ash and hickory in the bank of the creek; thence N. 57½° E., 31 8/10 poles, to a stone on the south bank of the flat fork; thence N. 38° E., 85 3/10 poles, to a hickory (both the last named corners being corners of Pogue's mill tract;) thence S. 62½° E., 110 poles, to two blue ashes and a sugar tree; thence S. 21° W., 158 poles, to beginning; being the same land conveyed by Bodley and Pogue to said Jonathan Rose, together with all and singular the personal property in the possession of and now owned by said Jonathan Rose, together with all and singular the premises thereunto belonging, or in any wise appertaining. To have and to hold the land hereby conveyed, and the appurtenances, unto the said Jonathan H. Rose, his heirs and assigns forever; and the said Jonathan Rose, for himself, his heirs, executors and administrators, the aforesaid tract of land and premises, unto the said Jonathan H. Rose, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, claiming through or under him, but against no other whatsoever, does and will forever defend by these presents.

In witness whereof the said Jonathan Rose has hereunto set his hand and seal the day and date first above written.

JONATHAN ROSE, [SEAL.]
ELIZABETH ROSE. [SEAL.]

Acknowledged in the presence of—

FLEMING COUNTY, *sct:*

July 2*d*, 1827.

As deputy clerk of the Fleming circuit court, I certify, that this deed, from Jonathan Rose to Jonathan H. Rose, was this day produced before me, and acknowledged by said Jonathan Rose to be his deed, and the same is duly recorded. JAMES CRAWFORD, *D C.*

FLEMING COUNTY, *sct:* *October* 18*th*, 1828.

As deputy clerk of the Fleming county court, I certify, that this deed, from Jonathan Rose and Elizabeth, his wife, to Jonathan H. Rose, was this day produced before me, and the said Elizabeth being examined by me privily and apart from her said husband, declared that she did freely and willingly seal and deliver said *said* writing, and wished not to retract it, and acknowledged said writing, again shown and explained to her, to be her deed, and consenteth that the same may be recorded, which is done.

G. M. STOCKTON.

Bond—Pogue to Tilton and Huston.

Know all men by these presents, that I, Robert Pogue, of the county of Mason, and State of Kentucky, doth bind myself, my heirs and assigns, unto Richard Tilton and John Huston, their heirs or assigns, of the county and State above said, in the penal sum of four thousand dollars; which payment, well and truly to be made, I bind myself, my heirs and assigns, by these presents, unto the said Richard and John above mentioned, their heirs and assigns.

In witness whereof I have hereunto set my hand and seal, this 28th day of April, eighteen hundred and thirteen.

[SEAL.]

In presence of—

The condition of the above obligation is such, that if the above bound Robert Pogue shall well and truly make, and cause to be made, a good and sufficient warranty deed, unto the above mentioned Richard Tilton and John Huston, their heirs and assigns, for the grist mill he now owns on the Flat fork, with fifty acres of land thereunto belonging, including the lot on which the mill is erected, and the balance to be laid off adjoining Cash and Drake's line, so as to lie in a good form, and warrant and defend the said mill and land from himself, his heirs and assigns, and all other persons forever, then this obligation to be void, otherwise to remain in full force and virtue.

Witness my hand and seal, this date above.

ROBERT POGUE. [SEAL.]

AARON H. YOUNG,
JOHN H. POGUE.

A copy. Attest: MARSHALL KEY, *C.*

April 13th, 1818.

Being informed that Richard Tilton and John Huston has sold the mill mentioned in the within agreement, to Gibson Hambrick, and I do hereby agree to convey the title to said Hambrick, when he produces to me this bond.

ROBERT POGUE.

JOHN H. POGUE.

A copy. Attest: MARSHALL KEY, *Clerk.*

Agreement—Huston and others with Hambrick.

Memorandum of an agreement, made and agreed on between John Huston and Richard Tilton, of the one part, and Gibson Hambrick, of the other part, both of the county of Mason, and State of Kentucky, witnesseth: That the said John Huston and Richard Tilton hath this day bargained and sold their mill, and fifty acres of land, lying on the flat fork of Johnson, and to lie in the form as described in Pogue's bond to Huston and Tilton, for the sum of two thousand dollars, payable in four years, in the following manner: and the said Gibson Hambrick, on his part, promises to pay the said John Huston three hundred and thirty-three and a third dollars, on or before the first day of July,

1817; also three hundred and thirty-three and one-third dollars on the first day of July, 1818; also three hundred and thirty-three and one-third dollars on the first day of July, 1819, one thousand dollars in all, to said Huston; also he agrees to pay to the above said Richard Tilton five hundred dollars on the first day of July, 1819, with lawful interest thereon from the first day of July, 1816, till paid; also the said Hambrick agrees to pay to the said Tilton five hundred dollars on the first day of July, 1820, with lawful interest thereon till paid, making one thousand dollars in all to said Richard Tilton, two thousand dollars in the whole to said Huston and Tilton; and when the before mentioned money is paid, the *the* Huston and Tilton is to give same Gibson Hambrick Pogue's bond *for the bond* for the title, with an order on said Pogue to convey the same to said Hambrick, with a receipt from said Pogue that the two thousand [dollars] has been paid to him for the mill; and said Hambrick agrees to take said Pogue for the title of said mill and land.

Witness all our hands and seals, this 13th day of April, 1816.

JOHN HUSTON, [SEAL.]
RICHARD TILTON, [SEAL.]
GIBSON HAMBRICK. [SEAL.]

Attest: JAMES N. WILSON.

For value received, I assign the within bond to Benjamin Fitzgerald. Witness my hand and seal, this *this* 21st day of April, 1828.

G. HAMBRICK. [SEAL.]

A copy—attest: MARSHALL KEY, *Clerk*.

Deed—Robert Pogue to Benjamin Fitzgerald.

This indenture, made the 16th day of August, in the year eighteen hundred and twenty-eight, between Robert Pogue and Jane, his wife, of the county of Mason, and State of Kentucky, of the one part, and Benjamin Fitzgerald, of the county and State aforesaid, of the other part, witnesseth: That the said Robert Pogue, for and in consideration of the sum of two thousand dollars, to him in hand paid by John Huston and Richard Tilton, agreeably to the bonds filed in the suit in chancery, Gibson Hambrick against Richard Tilton's administrator and others, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Benjamin Fitzgerald, his heirs, and assigns, forever, all that tract or parcel of land situate in the county of Mason, on the flat fork of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at a black ash and hickory, on the bank of the flat fork; thence north 20° 30′ east, 114 poles, to a hickory and dog wood; thence north 62° west, $88\frac{6}{10}$ poles, to a haw bush, red oak, sugar tree, box elder, and hickory, corner to James Morris; thence, with his line, north 27° east, 35 poles, to a stake in said line; thence south 62° 30′ east, 130 poles, to a stone in John Cashe's line, in the mouth of a

branch between two hickories; thence south 4° 30′ east, 41 poles, to an old white oak, iron wood, and dog wood, in Rose's line; thence, with the same, north 62° west, 17 poles, to his corner, a hickory; thence south 38° west, 85 poles, to a stone on the south side of the fork; thence south 57° 30′ west, 31 $\frac{8}{10}$ poles, to the beginning, containing fifty acres, and including the mill now in the possession of Gibson Hambrick. To have and to hold the above described tract of land, and every part and parcel thereof, together with the mill, and the appurtenances thereunto belonging, or in any wise appertaining to the same, unto the said Benjamin Fitzgerald, his heirs, and assigns, forever, to the only proper use, benefit, and behoof of him, the said Benjamin Fitzgerald, and his heirs and assigns. And the said Robert Pogue, for himself, his heirs, &c., doth covenant, to and with the said Benjamin Fitzgerald, and his heirs, &c., that he will warrant and forever defend the above described tract of land from the claim or claims of all and every person or persons whatever.

In witness whereof, the said Robert Pogue and Jane, his wife, have hereunto set their hands and seals, the day and year first written.

ROBERT POGUE, [SEAL.]
JANE POGUE. [SEAL.]

STATE OF KENTUCKY, *Mason county, set:*

I, Marshall Key, clerk of the county court for said county, certify that this deed of conveyance from Robert Pogue and Jane, his wife, to Benjamin Fitzgerald, was this day produced in my office, and acknowledged by the said Robert Pogue to be his act and deed, for the purpose therein mentioned; and the same is duly recorded in my said office.

Given under my hand, this 16th day of August, 1828.

MARSHALL KEY.

Co. deed—Fitzgerald to Blair.

This indenture, made the 20th day of September, eighteen hundred and thirty-two, between Benjamin Fitzgerald, of the county of Daviess, and State of Indiana, of the one part, and Thomas Blair, of the county of Mason, and State of Kentucky, of the other part, witnesseth: That the said Benjamin Fitzgerald, for and in consideration of the sum of six hundred dollars, to him in hand paid, or secured to be paid, by the said Thomas Blair, to him, the said Benjamin Fitzgerald, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, sell, alien, and convey, unto him, the said Thomas Blair, all that tract or parcel of land, situate, lying, and being in the county of Mason, containing fifty acres, more or less, and bounded as follows, to wit: Beginning at a black ash and hickory, on the flat fork of Johnson's fork; thence north 20° 30′ east, 114 poles, to a hickory and dog wood; thence north 62° west, 88 $\frac{6}{10}$ poles, to a haw bush, red oak, and sugar tree, box elder, and hickory, corner to James Morris; thence, with his line, north 27° east, 33 poles, to a stake in said line; thence south 60° 30′ east, 131 poles, to a stone in John Cash's line, in the mouth of a branch between two hickories; thence south 4° 30′ east, 41 poles, to

an old white oak, iron wood, and dog wood, in Rose's line; thence, with the same, north 62° west, 17 poles, to his corner, a hickory; thence south 38° west, 85 poles, to a stone on the south side of the flat fork; thence south 57° 30′ west, 31 $\frac{8}{10}$ poles, to the beginning, being the same tract conveyed by Robert Pogue to Benjamin Fitzgerald, by deed bearing date the 16th day of August, 1828, including therein a mill. To have and to hold the said tract or parcel of land above described, together with all and singular the privileges and appurtenances thereunto belonging, or in any wise appertaining to the same, unto the said Thomas Blair, his heirs and assigns, forever, and to their only proper use, benefit, and behoof. And the said Benjamin Fitzgerald, for himself, his heirs, executors, and administrators, doth hereby covenant, to and with the said Thomas Blair, his heirs, executors, and administrators, that in case the land hereby conveyed shall be taken or lost by any better or prior claim, that, in that event, the said Fitzgerald will refund to him, the said Thomas Blair, the purchase money therefor, without interest.

In testimony whereof, the said Benjamin Fitzgerald and Sarah, his wife, who hereby relinquishing her right of dower of, in, and to the land and premises herein conveyed, have hereunto set their hands and seals the day and year first above written.

B. FITZGERALD, [SEAL.]

her
SARAH + FITZGERALD. [SEAL.]
mark.

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court for said county, do certify that this deed of conveyance, from Benjamin Fitzgerald and Sarah, his wife, to Thomas Blair, was this day produced in my office, and acknowledged by the said Benjamin Fitzgerald and Sarah, his wife, to be their act and deed, for the purposes therein mentioned; and the said Sarah being by me examined separate and apart from her said husband, and having the said deed fully explained to her, again acknowledged the same, and freely and voluntarily relinquished all her right and title to dower, in and to the land and premises thereby conveyed, without the threats or persuasion of her said husband, and was willing the same should be recorded; and the same is recorded in my said office.

Given under my hand, this 20th day of September, 1832.

MARSHALL KEY.

A copy—attest: MARSHALL KEY, *Clerk.*

Master's report.

The following is the master's report:

AMBROSE WALDEN'S heirs
against
BODLEY'S heirs. } In chancery.

[For plat, see original.]

2103.

Explanation.

7, 8, 9, 10, and red line, Walden's entry; 7, 8, 9, 10, and black lines, Walden's patent; C, E, F, G, black and dotted lines, Craig's 400 acres, laid down by protraction; in pursuance to the order of the court, I have laid down the patent and entry of Walden from the plats filed in the cause, and also the patent of Johnson, upon the diagram of the patent calls of Walden, represented by *letters* 7, 8, 9, 10, in black. I have laid down the four hundred acres laid off by Whitfield Craig for Lewis Craig, as locator, assuming, as a beginning, the corner at 9, and running with the line in the direction to 8, 135 poles; thence, at right angles, 329 poles; thence, to the original line of Walden's patent, running from 9 to 10, south 51° west, 168 poles, and thence to the beginning; upon the 400 acres thus laid down to Craig, I have transferred, from the last plat returned in the cause, the parts thereof claimed by Rose and Crupper, Tracy and Umstead. I find nothing in the papers from which I am enabled to find the true position of these claims; the 400 acres to Craig is laid down by protraction upon the scale of 90 poles to the inch, being the scale found upon the plat, but returned in the cause. There is nothing in the papers from which I can find the position of any of the corners called for in the 400 acres laid off to Craig, except the beginning corner at C and 9.

On the diagram, if these corners should be found, and they should vary from the course and distance given, then the position of this tract of 400 acres would be changed from the position assumed for it upon the diagram.

JOHN C. HERNDON, *M. C.*

August 18th, 1846.

October 22d, 1845.

MASON COUNTY, *sct:*

AMBROSE WALDEN'S heirs, complainants,
against
BODLEY'S heirs, POGUE'S heirs, defendants. } In chancery.

Surveyor's report.

In obedience, and in pursuance of an order of the United States circuit court, eighth circuit, district of Kentucky, made at the May term thereof, in the year 1845, directing the surveyor of Mason county to survey and lay down the premises in controversy between the parties according to the final decree rendered in the original cause, I have, so far as means now within my control, done the same by laying down in connection with the surveys of Walden's as decreed, and as originally surveyed, the several tracts in the possession of the tenants in ejectment; all which are represented on the plat, which is explained by the following references:

C, 4, 5, 6, red dotted lines, Peter Johnson's settlement, survey of four hundred acres, as originally surveyed. C, 1, 2, 3, red lines, represented the same survey laid down under the interlocutory decree herein. 1, 2, 3, 4, 1, black lines, Peter Johnson's pre-emption survey of

one thousand acres, laid down adjoining his settlement survey, by lines equi-distant therefrom. 1, 2, 5, 6, 11, that part of the same survey, as originally surveyed, that comes within the controversy. 7, 8, 9, 10, 7, red lines, Walden's entry of thirteen hundred and thirty-three acres, laid down under the decree aforesaid. 7, 8, 9, 10, 7, black lines, the same entry as originally surveyed; a, a, a, a, represents the 150 acres in the possession of Dale Carter, at the institution of the ejectment. 11, 12, a, a, a, represents that part of the one hundred and fifty acres covered in common by the two surveys of Walden, laid down as above stated. B, B, B, B, B, B, represents the one hundred acres in the possession of the tenant, John Cash, in the ejectment. B D, B a, B c, B c, that part thereof lying within the two said surveys of Walden. 9, D, D, D, D, D, the one hundred and fifty acres in the possession of Jonathan Rose and John Crupper, at the time aforesaid. 13, 14, D, D, D, D, D, that part thereof within Walden's survey. C, C, C, C, C, C, the one hundred in the possession of *Jil*son Ham*buc*, at the time aforesaid, and within Walden's two surveys; f, f, f, f, f, c, the land in the possession of Nancy Tracy at the time aforesaid, lying within Walden's two surveys. H, H, H, H, the one hundred and three acres and sixty poles, in the possession of Benjamin Umstead at the time aforesaid, and within Walden's two surveys; e, e, e, e, e, e, e, e, represents the farm formerly owned by John Triplett. 15, e, e, e, 16, 8, 5, that part thereof within Walden. The interference of some of the tenements with each other, as appear on the plat, arise from some miscall in boundary, which is not in my power here to correct. 5, e, e, e, 5, represents fifty acres now in the possession of Edwin P. Pogue's heirs. All of which is respectfully submitted to the inspection and consideration of the court.

ATHELSTON OWENS,
Surveyor of Mason county.

October 1*st*, 1846.

MASON COUNTY, *sct:*

RICHARD WALDEN and al., complainants,
against
THOMAS BODLEY'S and al., defendants.
} In chancery.

[For plat see original.]

I this day met the parties litigant on the land in controversy between them in this suit, and in obedience to an order of the circuit court of the United States, eighth circuit, district of Kentucky, commenced at the southeast corner of Walden's survey of thirteen hundred and thirty-

three acres of land, as originally made and granted by patent, (represented on the plat above by fig. 9, heretofore shown by Simon Kenton,) and ran by a line thereof, in pursuance of Whitfield Craig's survey of the locator's interest in said survey. N. 227 E., one hundred and fifty-seven poles, (distance overholding two poles, and course varying ¼° to the left hand,) to a stake, the N. E. corner of the tenement formerly in the possession of Jonathan Rose, (now John Kincaid,) shown as such by Jno. N. Proctor, at fig. (1;) thence N. 60° W., with the locator's line, three hundred and thirty poles, (distance overholding one pole, and course varying one degree to the left,) a stake in Johnson's line, at (2;) thence with that line S. 22° W., (corresponding variation,) one hundred and sixty-nine poles, (one pole over,) to two of three white oak trees, the S. W. corner of Johnson's survey, as originally made, at (3;) and thence S. 60° 9' E., four hundred and thirteen poles and twenty links, to the beginning, embracing an area of four hundred and sixty-three acres and thirteen poles, instead of four hundred acres, as reported by Whitfield Craig. This I report to be the land allotted to Lewis Craig by commissioners as the locator's interest in the said Walden's survey, ascertained as above stated. The trees cornered upon at 1 and 2 being gone, in the first instance, a road in the second, bordering on cleared land, but terminating in Johnson's land, as called for, and shown by Joseph *by Joseph* Duncan. Of this tract locator's part (locator's part, 1, 9, 4, 5, 6, 11, 1, represents 149 acres, 1 rood, and 29 poles, by actual survey, now in the possession of John Kincaid, holding under Jno. N. Proctor, who held under Rose, (see depositions of Jos. Duncan and Jas. Morris.) 1, a, b, 4, 5, 6, 11, 1, that part of the one hundred and forty-nine acres, one rood, and twenty-nine poles, lying within Walden's patent and entry. 15, 14, 5, 6, 11, 15, that part of the Hambrick tract lying within the locator's part, now in the possession of Thomas Blair, who holds title under *Thomas* Fitzgerald by deed in 1832. Tilton and Huston were contractors with Robert Pogue for this and the residue of the Hambrick tract; they sold to Hambrick, who afterwards sold to Fitzgerald, who obtained a conveyance from Pogue about 1829. Statement of Thos. Blair. This part of the Hambrick tract contains fifteen acres, one rood, and seven poles, by survey. 11, 30, 31, 32, 11, the balance of the Hambrick tract, in the possession of said Blair, outside of the locator, said to contain thirty acres, covered in common by Walden's two surveys. 4, 12, 13, 14, 4, represents 14 acres, 3 roods, and 8 poles, within the locator, in the possession of said Blair, held by purchase from Robert Pogue, who held under Lucius Chapin. No title or conveyance has yet passed. Statement of said Blair. This tract has never had a regular tenant upon it. Statement of Joseph Duncan. 2, 21, 22, 12, 13, 14, 16, 17, 18, 19, 20, 2, represents one hundred and forty-nine acres and twenty-eight poles, part of the locator's interest, now in the possession of Benjamin Umpstead, a part of which, say 79 acres, he holds by purchase from Johnson, forty-five acres, without specific boundary, by purchase of John Drake Taylor, and the balance, 25 acres, by purchase from Larkin A. Sanbridge; also, without boundary,

the forty-five and twenty-five acres, by within what is termed, in the ejectment, the Tracy tenement—per statement of said Umstead. That part of the land which Umstead held, to which the deposition of Joseph Duncan particularly relates, is represented on the connected plat by 2, 3, 33, 20, 2. That of J. Morris, to the whole of the land in Umstead's possession. 21, 3, 22, 21, represents fourteen acres, two roods, and thirty-six poles, part of the Umstead tract, which he sold to William Allen in 1813, who afterwards, say in 1816, sold the same to one William Craig, whose widow and heirs are now in the possession of it. This part of the Umstead tract forms no part of the one hundred and forty-nine acres and twenty-eight poles now in his possession. 15, 16, 17, 18, 19, 20, 15, represents nineteen acres, 3 roods, and 28 poles, part of the Tracy tenement, which Sanbridge sold to John N. Proctor about 1832. Proctor afterwards sold to Jeremiah Wells; and in the current, say in June last, the same land was sold at auction, and stricken off to Richard Henry Lee, of Maysville, in this county. Statements of Joseph Duncan and Thomas Blair.

7, 8, 9, 10, 7, Walden's patent, }
23, 24, 25, 26, 23, Walden's entry, } As heretofore reported.
27, 28, 29, 3, 27, Johnson's patent, as reported.

I am in the possession of no evidence by which to show the boundary, or a diagram of the sales made by Lewis Craig to Rose, Rector, and Allen, or either of them, nor of Allen to Chapin, nor of Rose to Shockey, nor Allen to Drake: many of those sales seem to have been made unaccompanied by boundary conveyance.

The master commissioner erred in giving [a] *portion* to the locator's interest at a right angle to Walden's southeast line, instead of leaving it by an inclusive angle of ninety-seven degrees, as required by the survey of Whitfield Craig in the record, and as represented on the plat returned in the ejectment.

21, c, a, 22, 21, represents the part of Mr. Craig, &c., 14 acres, 3 roods, and 36 poles, lying within Walden's two surveys.

No evidence of title in writing were produced on the present occasion.

a, e, f, b, d, represents a part of the land covered in common by the two surveys of Walden's in wood and cleared land, in about equal parcels claimed by Apphra Pepper, Lucy Pepper, Thomas Blair, and Jeremiah Wells; per statement of Mr. Duncan.

Having thus reported all matters within my control touching the premises, and not heretofore reported, I respectfully submit the same to the inspection and consideration of the honorable court.

ATHELSTON OWENS,
Surveyor of Mason county.

We, the undersigned of the defensive party, at the suit of Ambrose Walden's heirs, in the United States circuit court, for the Kentucky district, acknowledge full and sufficient notice of the survey now in

progress in said suit, and waive the necessity of any other or formal notice thereof. October the 1st, 1846.

THOMAS BLAIR,
BENJAMIN UMSTEAD,
JOHN KINCAID.

This recognition of notice by Thomas Blair, Benjamin Umstead, and John Kincaid was made and signed by them in my presence.
ATHELSTON OWENS.

Here follows the record and proceedings in the suit of Bodley's heirs, Pogue's heirs, and others, against Walden.

BODLEY'S heirs, &c.
vs.
WALDEN, &c.

Record.

Pleas before the honorable John McLean and Thomas B. Monroe, judges of the seventh circuit court of the United States of America, in and for the Kentucky district, held at the Capitol, in the town of Frankfort, at the November term of said court, in the year of our Lord one thousand eight hundred and thirty-four.

Be it remembered, that heretofore, to wit, on the 14th day of March, in the year 1825, came Bodley, Pogue, and others, by their attorney, into the clerk's office of the court aforesaid, and filed the following bill in chancery, to wit:

Bill.

To the honorable the judges of the United States circuit court, for the seventh circuit, Kentucky district, in chancery sitting, humbly complaining, show unto your honors.

Your orators, Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, for himself, and as guardian in behalf of his infant children, Robert Taylor and John D. Taylor, Eliza Sandridge, who intermarried with Larkin A. Sandridge, late Eliza Drake, and William Drake, children of Rieney Drake, deceased, heirs at law of Abraham Drake, deceased, all of whom are citizens of the State of Kentucky.

That on the 17th day of October, in the year 1783, an entry was made with the surveyor of Fayette county, in the name of Henry Crutcher and John Tibbs, for 10,000 acres of land, in the words and figures following, to wit:

"Henry Crutcher and John Tibbs enter 10,000 acres of land on a Treasury warrant, No. 18,747, as tenants in common; beginning at a large black ash and small buckeye, marked thus, I, T, on the side of a buffalo road, leading from the Lower Blue Lick, a northeast corner, and about seven miles northeast and by east from the said Blue Lick, a corner of an entry of 20,000 acres, made in the name of John Tibbs,

John Clarke, John Sharpe, David Blanchard, and Alexander McLean; running thence with the said Tibbs & Co.'s line due east, 1600 poles; thence south, 1000 poles; thence west, 1600 *hundred* poles; thence north, 1000 poles, to the beginning," for quantity. To an attested copy of which your orators refer, and pray it may be taken as a part of this bill.

Your orators further show, that a survey was legally executed, and a patent obtained thereon in the names of Robert Rutherford, assignee of Henry Crutcher, and Willoughby Tibbs, heir at law of John Tibbs, deceased, on the day of 1790. That the said Willoughby Tibbs, after the emanation of the patent aforesaid, sold his interest in the said 10,000 acres of land to John Peyton, and conveyed it to him, who sold one moiety thereof to Charles Magill; and the said Robert Rutherford, John Peyton, and Charles Magill, sold and conveyed the whole of the said tract of land to Thomas Bodley, Robert Pogue, James Hughes, and Robert Campbell; that the said Robert Campbell relinquished and conveyed his interest therein to the said Bodley, Pogue, and Hughes; and the said Hughes afterwards, to wit, on the 11th day of October, 1815, conveyed all his right, title, and interest in and to the said 10,000 acres of land to your orator, Thomas Bodley. All which deeds are recorded in the county courts of Mason and Fleming; to attested copies of which entry, survey, patent, and deeds, (which shall be filed in due time,) your orators beg leave to refer, and pray they may be taken as a part of this bill.

Your orators charge that the said 10,000 acre entry is special, surveyed conformably to entry, and agreeably to law, possesses all the requisites of a good and valid claim, and has been sustained by all the courts of competent jurisdiction who have adjudicated upon it.

Your orators further charge, that a certain Ambrose Walden, a citizen of the State of Virginia, (who they pray may be made a defendant to this bill,) having on the 22d day of May, 1780, made the following entry with the county surveyor, to wit:

"Ambrose Walden enters 1,333 acres of land upon T. W., on the east side of Jacob Johnson's settlement, and pre-emption on the waters of Johnson's fork, a branch of Licking, to include two cabins on the north side of said fork built by Simon Butler, and to run eastwardly for quantity." On the 29th day of November, 1785, caused the same to be surveyed illegally, improperly, and contrary to entry, so as to interfere with your orators' claim aforesaid, and hath fraudulently obtained a patent of elder date than the one under which your orators claim as aforesaid.

Your orators charge that the said entry of Ambrose Walden is vague, uncertain, and ought not to be supported; that it has been illegally and improperly surveyed, so as to interfere with your orators' special entry aforesaid, inasmuch as the entry of Ambrose Walden calls for and depends on an entry of a settlement and pre-emption in the name of Jacob Johnson, and the entries made on said settlement and pre-emption are in the name of Peter Johnson, heir at law of Jacob Johnson,

and calls to lay on the east side of the Buffalo road, leading from the Blue Lick to Limestone, 9 miles from the Lick on the upper road, when in fact and in truth there are two Blue Licks, frequently and commonly known and distinguished by the names of the Upper and Lower Blue Lick, from both and each of which several buffalo roads extend out towards, and some of them from, each lick to Limestone, which makes said entry vague and uncertain.

Your orators further show unto your honors, that a certain Lewis Craig purchased of Simon Kenton, who, as the locator of said 1,333 acres of Walden's land, claimed one-third thereof for his services; and the said Craig had a division made of the said tract, allowing to him the third part which he claimed under Kenton, and sold several parts thereof by metes and bounds to Jonathan Rose, William Allen, and Charles Rector; and the said Rose sold part of his purchase to Abraham Shockey, and said Allen part of his to Amzel Chapin; and the said Ambrose Walden, alleging that he had satisfied the claim of the said Kenton as locator, commenced ejectments in the district court of the United States for the Kentucky district, against the said purchasers under Craig, and obtained judgments against them.

Your orators, Bodley and Pouge, further show, that the said Shockey and Chapin, knowing that the title they held under Craig for the land they claimed by purchases from Allen and Rose, was inferior to that of your orators herein set forth, because the tenants of your said orators, (with James Hughes and Robert Campbell, who then held the legal title to said 10,000 acres, entered in the names of Tibbs and Crutcher, and conveyed as hereinbefore set forth,) and who, on or about the 5th day of September, 1800, obtained an injunction in the said district court against the defendant Walden, enjoining the judgments aforesaid; all which will fully appear from the record and papers in said suit, which are referred to for greater certainty. That afterwards, to wit, on the 30th day of October, 1801, your said orators entered into an agreement with Lewis Craig, with the assent of the said Rose and Rector, who became security, and paid the purchase money, and obtained deeds from your said orators for the land they had bought of Craig as aforesaid; that shortly after the said Wm. Allen sold his land purchased of Craig as aforesaid, to Abraham Drake, to whom your said orators also made a deed for the same.

That your said orators, Bodley & Pogue, purchased Shockey's claim to the land he had bought of Rose, and on which he had erected a valuable mill; and they still hold the legal title to that and the land purchased by Chapin of Allen, and to a considerable part of the interference of their claim aforesaid with Walden's.

Your said orators, Bodley & Pogue, further state, that their said injunctions, under an impression that all the defendants therein were not non-residents, were by mistake dismissed; and the said defendant, Walden, about 12 years after obtaining his judgments aforesaid, and after the demise laid in his declaration in ejectment had expired, with a full knowledge of the manner in which the defendants in said ejectments

claimed the land they then possessed, and with a full knowledge of the complainants' claim, (having answered their bill aforesaid on the 28th day of April, 1802,) sued out writs of habere facias on his judgments aforesaid; and your [orators,] Bodley & Pogue, with James Hughes, filed their bill in this honorable court, and obtained a new injunction against the judgments in ejectment of said Walden aforesaid, and finding that the demise laid in the declaration had expired, the said Walden moved the court for leave to extend the demises, which was overruled, and James Hughes, who acted as attorney in the said injunction, discontinued the bill; and the said Walden afterwards, as your orators have been informed and believe, sued out writs of error in the Supreme Court of the United States, which court decided that the said Walden had a right to extend the demise laid in his declarations; and at the term 1824, by an order of this honorable court, he was permitted to extend his demises to fifty years, which, and at the same term, without any notice being given to the complainants in this suit, or to the defendants in ejectment, leave was given the said Walden to take out writs of habere facias possessionem after the 1st day of March, 1825; to the papers and proceedings in which suits your orators refer for greater certainty.

Your orators further state, that the said Jonathan Rose, Charles Rector, and William Allen, and those claiming under them, have had possession of their respective tracts of land by metes and bounds, as purchased from Craig, and held under the claim of Bodley & Co. as aforesaid, for more than thirty years, and have and now do hold the same adversely to the defendant Walden; that the said Shockey and Chapin, and those holding under them, have had possession for near the same length of time, and hold in the same manner; that your orator Rose now has the legal title to the tract of land he purchased of Craig, except the part sold to Shockey; that the legal title of the tract purchased of Craig by Charles Rector is in your orator Umstead; the legal title of the tract purchased by Allen of said Craig, except the part sold to Chapin, is in your orators, the heirs of Abraham Drake, deceased; and that the legal title to the part sold to Shockey and to Chapin, is in your orators Bodley and Pogue. Your orators are informed, and believe, that the defendant Walden never has had actual possession of any part of his said survey of 1,333⅓ acres, except two hundred acres conveyed by him to Robert Pogue, by proper metes and bounds, and about 150 acres of which is now held and claimed by Dale Carter, and the balance by your orator Pogue. That the said Lewis Craig is totally insolvent, and has been for many years; and your orators Rose, Umstead, and Abraham Drake's heirs, can expect no remuneration from him in case the land should be taken by the defendant Walden's claim. Your orators have made valuable and lasting improvements on said land, for which they require pay if the land should be taken from them.

Your orators further show to your honors, that the defendant Ambrose Walden hath taken out executions against your orator Rose, &c., for the costs of said ejectmen, and has or is about to sue out writs of

habere facias possessionem on the judgments aforesaid so improperly obtained, and thereby to turn your orators out of possession, and has commenced new writs of ejectment against your orators, and those holding under them, by which means he is harassing and perplexing your orators, and putting them to great trouble and costs; and although the defendant Walden must know that the claim of your orators is superior to his, combining, &c., threatens to turn your orators out of possession, and refuses to surrender his elder title so fraudulently and improperly obtained as aforesaid; all which actings and doings are contrary to equity, &c. In tender consideration whereof, and forasmuch as your orators are remediless at common law, and can only be relieved in equity; to the end, therefore, that the said defendant Walden may be compelled, upon his corporal oath, true and perfect answer to make, to all and singular the premises as fully as if the same were here again repeated and interrogated; that, by a decree of this honorable court, the said defendant may be compelled to convey to your orator his elder title to the whole of the land in controversy; and that, until the matter can be finally heard in equity on the merits of their respective claims, that the injunction heretofore granted may be reinstated, or that a new injunction may be granted your orators, enjoining and restraining the defendant Walden, and all other persons, from further proceedings on the executions aforesaid, for costs, and upon the five judgments aforesaid in ejectment obtained in this honorable court, against the said Rose, Rector, Allen, Shockey, and Chapin, and that your orators may receive such further and other relief as to equity and good conscience belongs.

May it please your honors to grant to your orators the United States writ of subpœna, with injunction, &c., directed, &c.; and your orators will ever pray.

THOMAS BODLEY,
For the complainants.

We hereby release all errors at law in the judgments prayed to be enjoined by this bill.

Given under our hands and seals, this 9th day of March, 1825.

THOMAS BODLEY, [SEAL.]
ROBERT POGUE, [SEAL.]
JONATHAN ROSE, [SEAL.]
BENJAMIN UMSTEAD, [SEAL.]
ROBERT TAYLOR, [SEAL.]
For himself and heirs of A. Drake.

Justice's certificate.

STATE OF KENTUCKY, *Mason county, sct:*

Personally appeared before me, a justice of the peace for said county, Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, who severally made oath that the facts stated in the foregoing bill, from their own knowledge respectively, are true, and what is stated from the information of others, they believe to be true.

Given under my hand and seal, this 9th day of March, 1825.

JAS. MORRIS. [SEAL.]

Injunction granted.

UNITED STATES OF AMERICA,
7th circuit and district of Kentucky, sct:

Let an injunction issue agreeable to the prayer of this bill, upon complainants entering into bond in the penalty of $1,000 with Nathaniel Hixon, their security, conditioned according to law.

Given under my hand, this 14th day of March, 1825.

THOMAS TODD,
An associate justice of the S. C. U. S.

To the clerk of the 7th circuit court of the United States and district [of] Kentucky.

Upon which bill the following subpœna in chancery, with injunction, issued, to wit:

Subpœna.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Ambrose Walden, a citizen of the State of Virginia, to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the Capitol, in Frankfort, on the 1st Monday in May next, to answer a bill of injunction exhibited against him by Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umstead, and Robert Taylor, for himself and as guardian on behalf of his infant children, Robert Taylor and Jno. D. Taylor, Eliza Sandridge, who intermarried with Larkin A. Sandridge, late Eliza Drake, and William Drake, children of *Reemy* Drake, deceased, and heirs at law of Abraham Drake, deceased, all of whom are citizens of the State of Kentucky; and this they shall in no wise omit under the penalty of $400 each, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the Supreme court of the United States, hath caused the seal of our said court to [be] hereunto affixed, this 14th day of March, 1825, and of our independence the forty-fifth.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The defendant, Ambrose Walden, and all others concerned, are hereby enjoined and restrained from further proceedings on five judgments in ejectment obtained by said Walden's lessee, at the June term of the district of the United States, in and for the district of Kentucky, in the year 1800, to wit, said Walden's lessee against Craig and Chapin; same against Craig and Allen; same against Craig and Rutter; and same against Craig and Shockey; and from all proceedings on the executions for costs which have issued on said judgments.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

To wit: Not found, and no inhabitants of this district.

CHAPMAN COLEMAN, *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of June, in the year 1825, came the defendant, Ambrose Walden, and filed the following answer, to wit:

Walden's answer.

The answer of Ambrose Walden to a bill in chancery filed against him in the United States circuit court, for the 7th circuit and district of Kentucky, by Thos. Bodley, Robert Pogue, Jonathan Rose, &c. This respondent, now and at all times saving and reserving to himself all and all manner of exceptions, &c., for answer to so much of said bill as he is advised is material for him to answer, he answers and says, that it is true that he has obtained judgments in ejectments against the complainants, that are tenants on the land in contest, by virtue of his legal and better title thereto, and that he has been for many years laboring to possess himself of said land, as he believes he had a right to do; but admits the complainants have had the management, by one art and another, to defeat his just claim so far as still to keep him from the possession and enjoyment thereof, and have had the adverse possession for a long time; but as this respondent does [not] know exactly how long, or that it is as long as stated in the complainant's bill; if it is to avail the complainants any thing, he requires them to prove the length of time; this respondent is apprized [that] some improvements have been made on the land recovered by him in his action at law, but their value he is not informed of, but charges as a fact, that he is informed of and believes that the destruction of valuable timber, and waste and reduction of soil, is near equal, if not greater, than the value of improvements; and that the rents and profits would greatly bring the complainants in debt upon a fair adjustment and settlement of accounts between complainants and respondent; and which this respondent insists on in the final hearing of this case.

This respondent cannot pretend to know the reasons of the court for dismissing the first injunction and bill of the complainants, nor the still more inscrutable reasons of the complainants for dismissing their second bill and injunction, which was by them obtained; nor does this respondent conceive those reasons assigned by them ought to avail them much, as they were nothing better than a legal trick to gain the respondent's property by possession, when it is well known the ejectments of this respondent were brought very shortly after the adverse possession of his lands. This respondent pleads and relies on the judgment of the court in dissolving the injunction, and dismissing the complainants' first bill, and the act of the complainants in voluntarily dismissing and abandoning their second bill and injunction, and insists this bill and injunction, now pending, ought to be dismissed and barred. This respondent refers to the records and proceedings in the other two cases for greater certainty.

This respondent does not know, of his own knowledge, the sufficiency of the complainant's entry, its identity as to the ground surveyed for it, the notoriety or speciality of its calls, or indeed any of the legal re-

quisites to support it, as equitable or legal claim to the land in contest, or any part thereof; nor does this respondent, of his own knowledge, know any thing of the pretended contracts or conveyances by which the complainants derive their claim to said entry, survey, or patent, or the land now claimed under the entry made for Henry Crucher and John Tibbs, of 10,000 acres; and of all those facts and statements this respondent requires full and ample proof; and as to the calls of the entry referred to by the complainants of 20,000, in the name of John Tibbs & Co., this respondent has no knowledge of its legal sufficiency, of the notoriety and speciality of its calls, or of the requisites to establish; and, so far as they are material, this respondent requires proof fully satisfactory.

This respondent states, that it is time he had an entry of 1,333 acres made for him on a Treasury warrant, on 22d day of May, 1780; a copy of which said entry is herewith filed, and marked (A), and prayed to be taken and considered as a part of this answer. This respondent states, that before this entry was made, one Jacob Johnson had made a settlement, and raised and entitled himself to a certificate for a settlement for 400 acres, and to a pre-emption of 1,000 acres; and although the certificate was obtained in the name of Peter Johnson, heir at law of said Jacob Johnson, it was in fact Jacob Johnson's right which the heir obtained; and it was called, known, and reputed to be Jacob Johnson's settlement and pre-emption, at the date of this respondent's entry; and said settlement and pre-emption was then, and in that neighborhood, notoriously and generally known as Jacob Johnson's settlement and pre-emption.

This respondent states and insists, as he is advised and believes, that his said entry is good and valid in law; that the objects called for were, at the date thereof, notorious by those names; and its locative calls, special and precise, and certainly designated the land intended to be included.

This respondent is not well informed in law, upon questions involved by conflicting land titles in Kentucky; but he is advised to allege and charge, and does so charge and allege, that his said entry was duly surveyed according to law, so far at least as to properly and rightfully include the land now in dispute, and was legally and duly patented. This respondent relies on his elder entry, survey, and patent; all which are referred to, and made parts of this answer; and also relies on his judgments at law.

This respondent states positively that, as to the claim pretended to be derived from *Leiman* Kenton, as locator for part of this land, it is wholly without foundation in justice; that said Kenton was amply and fully paid for locating said tract of 1,333 acres, and was not to have a foot of said land. This respondent denies all fraud of which he stands charged, and prays the benefit of his judgments at law, and to be hence dismissed with his costs, &c.

SHARPE, *for Defendants.*

Justice's certificate.

STATE OF KENTUCKY, *Franklin county, sct:*

This day William Walden, the acting agent of the above named Ambrose Walden, appeared before me, a justice of the peace for said county, and made oath, that he is the agent for said Ambrose Walden, and attending to the suit named in this answer for him, and that said Ambrose is a citizen and resident of Fauquier county, Virginia, and is old and very infirm, and depends entirely on this affiant to attend to this suit. And this affiant states the foregoing answer was drawn by his direction, and it is so far as he knows true; and so far as is not within his knowledge, but he has received by information, he believes to be true.

Sworn to before me, this 16th day of May, 1825.

LEWIS SANDERS, Jr., *J. P. F. C.*

Replication to answer.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of December, in the year 1825, came the complainants, and for replication to the defendant's answer say, that their bill is true, and that the allegations in the answer, so far as they contradict their said bill, are untrue, and dedimus are awarded either party to take depositions.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1825, on motion of the complainants, leave is given them to amend their bill, on payment of costs, which bill is filed accordingly; and, by consent of the complainants, the defendant is permitted to answer the said amended bill, by his agent, E. M. Blackburn, which answer is to be received without oath; which amended bill is as follows, to wit:

Amended bill.

An amendment to a bill in chancery, depending in the United States court for the seventh circuit, Kentucky district, wherein Thomas Bodley, Robert Pogue, and others, are complainants, and Ambrose Walden is defendant.

Your orators, Thomas Bodley and Robert Pogue, respectfully represent, that since filing their original bill, by virtue of a decree of the Fleming circuit court, in the State of Kentucky, at their March term, 1825, in the suit in chancery wherein your said orators were complainants, and said Ambrose Walden, the unknown heirs of John Walden, deceased, and others, were defendants, they have obtained a deed executed, acknowledged, and recorded, from James Crawford, commissioner appointed by the said Fleming court, by virtue of their decree aforesaid for the whole of the land in controversy, (except the 150 acres in Ambrose Walden's survey of 1,333⅓ acres, conveyed by the said Ambrose Walden, and now in the possession of Dale Carter; and except so much of John Walden's elder survey of 1,666⅔ acres, as is now in the possession of Thrailkield, Anne Thrailkield, and the heirs of Jere-

miah Proctor, deceased;) to a copy of the record and proceedings of the said Fleming circuit court, in the said suit, which remains unreserved and in full force; and to the said deed, your orators refer and pray they may be taken as a part of this their original bill, which deed they plead in bar of the defendant Walden's action at law, and charge and pray as in their original bill.

Your orator Thomas Bodley further charges and represents to your honors, that part of the entry of the defendant Walden of 1,333⅓ acres, interferes with an entry of 20,000 acres, made on the 31st day of July, 1783, in the names of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean, with the proper surveyor, 16,000 acres of which was surveyed and patented in the name of your orator Bodley, and covers a part of the defendant Walden's said survey of 1,333⅓ acres; to attested copies of which entry of 20,000 acres, and the patent of your orator of 16,000 acres, he refers, and prays they may be taken as a part of this and the original bill. Your orator charges that the said entry of 20,000 acres is special and valid, and that the entry of 1,333⅓ acres of the defendant Walden is vague and uncertain, and cannot be sustained as charged in the said original bill, and prays that the defendant Walden may be decreed to convey to your orator the land in controversy, and that your orator may receive such other and further relief as he is entitled to in equity; and will ever pray, &c.

THOS. BODLEY, *Complainant.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of March and year 1831, until which time this cause was continued, came the defendant, and gave the complainants a rule for hearing.

Rule for hearing.

And at April rules, as aforesaid, came the defendant and set this cause for hearing.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1831, came the defendant, Ambrose Walden, and on his motion, the record and proceedings in the Fleming circuit court in this cause, is by agreement of the complainants placed on the docket for further proceedings to be had therein.

And afterwards, to wit, at the same term of the court aforesaid, the following agreement was entered into, to wit:

Agreement.

It is agreed, that, in the suits for trial, Thomas Bodley and others, against Ambrose Walden, and Clarke's heirs against Ambrose Walden, the records, exhibits, and depositions taken to [be] read in one case shall be read in evidence in all, and that the answer filed in the suit of Bodley, &c., shall be considered as filed in the case of Clarke's heirs against Walden, or that the defendants' counsel may at his election file an answer pro forma for the defendants in that suit and suits to be now placed on the issue docket, and stand for trial at the next term; and that the parties have leave, respectively, to take depositions and to amend the surveys.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, the following agreement was made in the following causes.

THOMAS BODLEY, &c., compl'ts, against AMBROSE WALDEN, &c., def'ts. } In chancery.

THOMAS BODLEY, &c., compl'ts, against AMBROSE WALDEN, &c., def'ts. } In chancery.

CLARKE'S HEIRS, complainants, against AMBROSE WALDEN, defendants. } In chancery.

DAVID DUNCAN'S HEIRS, compl'ts, against AMBROSE WALDEN, defendant. } In chancery.

This day came the parties, by their counsel, in the forgoing causes, and produced the following agreement in each, to wit:

Agreement in four causes.

Thomas Bodley and others against Ambrose Walden, &c., in chancery, in the United States court, seventh circuit.

It is agreed between the parties, that the record and papers which were used in the suit between the same parties in the Fleming circuit court, which has been removed into said United States court, shall be used and received as evidence in this suit; and that either party may be permitted to take any depositions they may wish to take, or make any amendment they may direct to the survey returned in said suit, the complainants to give notice to Edward Blackburn, agent for defendants, and the defendants to give notice to Thomas Bodley or Robert Pogue; if the depositions are to be taken in Lexington, one day's notice to Bodley shall be sufficient; and to retake Simon Kenton's deposition, or to take any other deposition, if taken in Mason or Fleming counties, or to amend the surveys, one day's notice to Robert Pogue of Mason county shall be sufficient; and that the surveys and depositions taken and used in the suit Bodley, &c., against John Taylor, may be used in this suit.

THOS. BODLEY,
For complainants.
E. H. BLACKBURN,
As agent for A. Walden.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1832:

Dedimus.

Dedimus awarded to take S. Kenton's deposition.

On motion of the defendant, by his counsel, in the foregoing cause, leave is given him, and a dedimus awarded, to take the deposition of Simon Kenton; and dedimuses are awarded either party to take depositions in said cause.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1833, the following entries were made, to wit:

THOMAS BODLEY, &c., compl'ts,
against
AMBROSE WALDEN, defendant. } In chancery.

CLARKE'S HEIRS, compl'ts,
against
THE SAME, defendant. } In chancery.

DUNCAN, complainant,
against
THE SAME, defendant. } In chancery.

This day these causes came on to be heard, but the court not being advised, took time, &c.

Leave to take depositions.

And by consent, either [party] have leave to take depositions and amend the survey between this and the next term of this court.

Abatement as to Bodley and Pogue.

And afterwards, to wit, at the November term of the court aforesaid, and year aforesaid, came the defendant Walden, and suggested the death of the complainants, Thomas Bodley and Robert Pogue; it is therefore considered by the court that this suit as to them do abate.

Rule to revive cause in name of heirs.

And on motion of the defendants' counsel, it is ruled that the complainants' counsel revive this cause in the names of the heirs of said decedents, on or before the first day of the next term of this court.

And afterwards, to wit, at the November term of the court aforesaid, and year 1833, came again the complainants' and defendants' counsel, and by consent, this cause is revived as to the said Bodley and Pogue in the name of their heirs and representatives, to wit: Harry J. Bodley, William S. Bodley, Hugh S. Bodley, Wm. H. Hurst and Anne J., his wife, late Anne J. Bodley, Edmund B. Church and Maria J., his wife, late Maria J. Bodley, John F. Bodley, Catherine E. Bodley, Thomas Bodley, Charles S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catherine H. Bodley, widow, heirs and representatives, of said Thomas Bodley, deceased; and James Pogue, John Pogue, Lindsey Pogue, Edwin Pogue, Robert Samuel Garrison, and William Andrew Mackey, heirs and representatives of the said Robert Pogue, deceased.

Guardian appointed.

Whereupon, on motion, J. H. Hanna is appointed guardian ad litem to John T. Bodley, Catherine E. Bodley, Thos. Bodley, Charles S. T. Bodley, Ellen P. Bodley, Geo. W. J. Bodley, and Wm. Andrew Mackey, infants under the age of 21; and this cause is again submitted to the court.

November Term, 1833.

THOMAS BODLEY and Robert Pogue's heirs, &c., complainants, against AMBROSE WALDEN, defendant. } In chancery.

DUNCAN'S HEIRS, compl'ts, against THE SAME, defendant. } In chancery.

CLARKE'S HEIRS, complainants, against THE SAME, defendant. } In chancery.

The court being now sufficiently advised of and concerning the premises, delivered the following opinion, to wit:

Opinion.

The court are of opinion that the entries of the complainants and that of the defendant are special, and ought to be surveyed as followeth: The claim of Bodley and Pogue to be surveyed as represented on the plat; the settlement of Johnson to be surveyed by beginning at the 9 mile point on the upper trace designated on the connected plat at the letter C, and to be laid off as followeth: To extend along the road until lines at right angle at each end of this base, with a third line parallel to the general course of the road, will include the quantity of 400 acres. Peter Johnson's pre-emption is then to be surveyed to adjoin the settlement, so that lines drawn equi-distant from the settlement lines will include the quantity of 1000 acres; and the court are of opinion that as to all the land which will be covered by the settlement when thus surveyed, and as it is already surveyed, that the complainants claiming under Peter Johnson, hath the better title; and that as to all the land included within the pre-emption as now surveyed, and that will be included in the survey, when laid off under this decree, those claiming under Johnson hath also the better title; and as to all the land included within the defendant's patent, not included by the settlement and the pre-emption respectively, according to this decree, that the defendant has the best right; and as to so much that the complainant's injunction claiming under Johnson ought to be dissolved. The court are of opinion that the defendant Walden's entry ought to be surveyed, to lie on the east side of Johnson's settlement when laid off as above directed, that is, on the opposite side of the road, making the centre of the S. E. line of Johnson the centre of Walden's entry, and to be laid off in a square; and as to all the land which will be common to the survey now made, and the survey according to this decree, Walden has the better title, and to so much the injunction of Bodley and Pogue ought to be dissolved; and that as to all the land covered by the entry under which Bodley and Pogue claim, not common to the surveys aforesaid, outside of Johnson's settlement and pre-emption when laid off as above, the defendant ought to convey to the heirs of the said Bodley and Pogue; and that the defendant ought to convey all the lands which will be taken or included in entries of Johnson when ascertained

as above directed, claiming under Johnson, to the complainants, agreeably to their titles respectively. And to enable the court to enter a final decree herein, the court direct the surveyor to go again upon the ground, and lay off, and ascertain the respective claims of the complainants and the defendant by metes and bounds; and the question of costs is reserved until the coming in of the decree.

It is admitted by the defendant's counsel, that the persons described as the heirs of Clarke and Duncan are the heirs of the persons as described in their bills.

THOS. BODLEY'S heirs, &c., complainants, against AMBROSE WALDEN, defendant. } In chancery.

DUNCAN'S heirs, complainants, against THE SAME, defendant. } In chancery.

CLARKE'S heirs, complainants, against THE SAME, defendant. } In chancery.

The defendant's counsel waived the necessity of complainants prosecuting a formal petition, &c.

Motion for re-hearing.

Whereupon defendants moved the court for a rehearing in these causes, upon grounds set forth in affidavit, which motion is laid over.

And afterwards, to wit, on a subsequent day of the term, and last aforesaid:

This day the motion for a rehearing on behalf of Pogue and Bodley's heirs came on to be heard, but the court not being advised, took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid:

It being stated by counsel that there was informality in reviving this cause at the last term, in the name of Pogue's heirs, some of the heirs not being named:

Revived in name of Pogue's heirs.

It now, on motion of Pogue's heirs, [is] revived in the names of John H. Pogue, Wm. S. Pogue, Edwin P. Pogue, Robert C. Pogue, Samuel Y. Garrison, and Anne E. Garrison, his wife, late Pogue, and Andrew W. Mackey, infant son of Jane J. Mackey, late Pogue; and leave is given either party to take depositions generally, until first day of October next, to be read on the motion for a rehearing, or upon the final hearing, if the cause is opened.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1834, these causes of Bodley's heirs, &c., against Walden, Clarke's heirs against Walden, and Duncan's heirs against Walden, were finally argued, but the court not being advised, took time, &c.

And at a subsequent day of the term aforesaid the court entered the following decree, to wit:

2112

Decree.

November term, 1834.

HARRY J. BODLEY, Wm. S. Bodley, Hugh S. Bodley, William H. Hurst and Ann J., his wife, late Ann J. Bodley, Edm. B. Church and Maria J., his wife, late Maria J. Bodley, John F. Bodley, Catherine E. Bodley, Thomas Bodley, Charles S. T. Bodley, Ellen P. Bodley, George W. J. Bodley, and Catharine H. Bodley, widow, heirs and representatives, of Thomas Bodley, deceased; and John H. Pogue, William L. Pogue, Edwin P. Pogue, Robert C. Pogue, Samuel Y. Garrison and Anne E. Garrison, his wife, late Pogue, and Andrew W. Mackey, infant son of Jane J. Mackey, late Pogue, heirs of Robert Pogue, deceased, complainants,

against

AMBROSE WALDEN, defendant.

} In chancery.

JUDITH LACEY, Susan Lacey, Mary Lacey, Thomas Lacey, Charles Lacey, Walter Lacey, and Daniel Lacey, heirs of Elizabeth Lacey, dec'd, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, dec'd; Thomas Clarke, Mary H. McMillan, daughter and heir of Mary McMillan, dec'd, who was formerly Mary Clarke, daughter and one of the heirs of said Benjamin, an infant by her father and guardian, Andrew F. McMillan, and Virginia Clarke, the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, dec'd; Walter Lacey, and A. F. McMillan, complainants,

against

AMBROSE WALDEN, defendant.

} In chancery.

JOHN PATTON and Nancy, his wife, Thomas Patton and Amanda, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, James Campbell and Mary, his wife, James Lindsey and Nancy, his wife, Martin Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, heirs and representatives of , complainants,

against

THE SAME, defendant.

} In chancery.

The court being now sufficiently advised of and concerning these causes, delivered the following decree, to wit:

By consent of the parties these suits were to be tried at the same time, and the papers and pleadings filed in one case should *should* be considered and have full effect in all the cases, to enable the court to decide the controversies in all the cases on their respective merits; the entries under which Bodley's heirs and Pogue's heirs claim appear to the court to be special, and to cover the whole of the land in contest; but being younger than those of Johnson and Walden, those latter entries must prevail, so far as they are special *special* and properly surveyed; and as the complainants, Bodley and Pogue, have no suit depending and for hearing, as to any defendant, except the defendant Walden, and the other complainants none except against said Walden, it will only be necessary for the court to settle how far Walden [has] shown the superior equity to the land in contest; it seems to the court that the surveyor has truly represented the survey as originally, now, and as it should have been surveyed according to the interlocutory decree of this court; and that the land, common to each survey of Walden, contains 1144 acres, *and* 2 roods, and 32 poles of land, as designated on the plat by the figure *red.* 8, and the letters , figure 7, and bounded as followeth, to wit: Beginning at a stake six feet north of a white oak tree, corner of Walden's, as last surveyed, represented at 8, and running thence with that line S. 37° 25′ E., 267 poles, to a stake in a line of Waldron's original survey in Tebbs' line at *f;* thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, north 20° E., from said Walden's original corner near Proctor's, at G; thence with the decreed line S. 52° 30′ W., 95 poles, to a stake in another of said Walden's old lines, in cleared land at *h;* thence with the old line N. 70° W., 22 poles, to a stake at I, another of the decreed lines; thence with that line N. 27° 45′ W., 273 poles, to two buckeyes and sugar trees at 7; thence N. 52° 35′ E., 461 poles and 21 links, to the beginning, from which is to be deducted three hundred and seventeen acres, 1 rood, and 28 poles, part of Johnson's pre-emption, and bounded as follows, to wit: Beginning at two buckeyes and sugar tree, corner to said Walden's decreed survey at 7; and running thence with that line N. 52° 35′ E., 461 poles and 21 links, to a stake 6 feet north of a white oak at red. 8, another of the decreed corners; thence with that line S. 37° E., 109 poles and 16 links, to a stake near a small elm at K, and in Johnson's decreed line; thence with that line S. 52° 35′ W., 461 poles and 21 links, to a stake near a field at ; and thence N. 37° 25′ W., 109 and 16 links, to the beginning, to which those claiming under Johnson have the best right.

It is therefore decreed and ordered that as to all the land outside of the said 317 acres, 1 rood, and 38 poles, last aforesaid, and within the 1144 acres, *and* 2 roods, and 32 *acres*, laid down on the connected plat, that the defendant Walden, so far as he hath possession, by his tenants, be ejected; and so far as it is possessed by the complainants, or any of

them, or those claiming under them, that they, on or before the first day of January next, render up and deliver possession to the said Walden; and as to all the land outside of the bounds of the 1144 acres, 2 roods, and 32 within the bounds of the 317 acres, 1 rood, and 38 poles, that the said Walden deliver the possession so far as he hath it, and that the injunction be made perpetual as to the same; and as to all the balance of 1144 acres, *and* 2 roods, and 32 poles, and cases at law, that the injunction be dissolved and possession delivered as before decreed; that the complainants shall jointly or severa*ly* as they may hold, convey by sufficient deeds of release, all their right and title in and to the balance of 1144 acres, 2 roods, and 58 poles of land, being 827 acres and 84 poles more or less of land; and on such release being executed or tendered, that the defendant shall convey to the complainants, at their proper costs and charges respectively, by deeds of release, such parts and portions as they respectively hold outside of the lands decreed to Walden. And to enable each party *to* have the full benefit of this decree, the clerk is authorized and directed, from time to time, to grant to each of them, or their attorney, as they shall apply, a writ or writs of possession, which the marshal is directed to execute, &c.

As the complainants have by multiplying suits greatly increased the expenses, it is decreed that each party pay their own costs in these suits.

Agreement.

The parties agree that a record of the bill, answers, and orders, the entries and surveys and patents, and the survey and decrees in the case of Bodley and Pogue in this court, shall be sufficient without recording the whole suits and papers in each and all the cases; and that on the event of either party appealing or suing out a writ of error, that the clerk may copy all the papers in all the records, and when they are so copied and certified, that the transcript shall have the same effect as if there were full and separate records made out in each and all the cases.

This agreement being formed and entered into, with the leave of court, to avoid expenses involved in the cases, owing to the multiplicity of suits involved in the same questions.

ROBERT WICKLIFFE,
Attorney for Walden.
JA. HAGGIN,
Attorney for compl'ts.

Decree annulled in part.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, on motion of the defendants' counsel, it is ordered that the decree entered up in the causes, Thomas Bodley's heirs, &c., against Ambrose Walden, Benjamin Clarke's heirs against Ambrose Walden, and Duncan's heirs against Ambrose Walden, be, and the same is hereby, annulled, and held for naught.

Motion to file bill, &c.

And on a subsequent day of the term aforesaid came the defendant, by his counsel, and moved the court for leave to file a supplemental

answer and cross bill in the first suit, (Bodley's heirs, &c., vs. Walden,) and for leave to file answers in the second and third suits, (Duncan's heirs vs. Walden, and Clarke's heirs vs. Walden;) but the court, not being advised, took time, &c.

Motion to file amended answers.

And on a subsequent day of the term aforesaid came the defendant, Ambrose Walden, by counsel, and moved the court for leave to file amended answers in the causes. Bodley's heirs, &c., vs. Walden, Duncan's heirs vs. same, and Clark's heirs vs. same.

Motion overruled.

And the court being advised, do order that the said motion be overruled.

Whereupon said defendant's counsel tendered to the court a bill of exceptions to said opinion, which was signed and sealed, and this day filed.

And the parties again come by their counsel, and these causes having been heard upon the bills, answers, and depositions, (including those taken and filed since the last term of this court,) the agreements of the parties, and the pleadings, reports, depositions, and other papers referred to in said agreements, together with the report of the surveyor, made under the interlocutory decree; and the court being now sufficiently advised of and concerning the premises, delivered the following opinion, and made the following order:

Opinion.

It is the opinion of the court that all the entries, under which the complainants claim, are valid; and that it sufficiently appears that these entries do embrace, and the grants issued upon them, and under which the complainants claim title, as they respectively represent, also cover all the land included in the grants under which the defendant Walden claims; and it still seems to the court, that the entry in the name of the defendant, under which he claims, is also valid for all the land which it covers within his grant, when surveyed according to the directions of the interlocutory decree; and that it being elder than the complainants' entries in the name of John Tibbs, Henry Clarke, and others, and in the name of Henry Crutcher and John Tibbs, it must prevail over them; but the settlement and pre-emption in the name of Peter Johnson having priority over the entry of the defendant, the complainants, who show title from Reid and Fox, to whom the grants were issued on said settlement and pre-emption claim, have the superior equity; and the court are satisfied that the survey and report made herein, under the interlocutory decree, correctly represents the interferences between the said claims in the names of said Johnson and the defendant.

On the principles applied to the facts in each case, the rights of the parties asserted to the lands in controversy, and represented in the report and plat of the survey used on the hearing, must be determined.

But in consequence of the position of the parcels of the land claimed

by Rose [and] Umstead, and the heirs of Drake, Clarke, [and] Duncan, not being represented on any of the plats, *not* shown in the cause by other proof satisfactory to the court, the right of the parties cannot now be determined with proper certainty.

It is ordered that the surveyor, Athelston Owens, go again upon the land in controversy, and survey as much of the several surveys of said land as is claimed by the complainants, Jonathan Rose, Benjamin Umstead, Robert Taylor, John D. Taylor, and others, heirs-at-law of Abraham Drake, Benjamin Clarke's heirs, and the heirs of David Duncan, under their several alleged purchases from Bodley & Pogue, and Reed & Fox, as may be necessary to ascertain whether said parcels of land be within or without the entry of Ambrose Walden, as laid down on the plat made and returned herein under the interlocutory decree, and to show the interference of said entry with any of said parcels of land which may be divided by the lines thereof; and that he also ascertain the position of the parcels of said land claimed by the heirs of David Duncan and Benjamin Clarke, so as to show whether said parcels of land be all within the entries in the name of Peter Johnson, and if not within them, what part thereof is covered by them; and, having done so, that he lay down such interferences, and the position of each said parcels of land, on a copy of the corrected plat, made and returned herein under the former order of this court. The surveyor may act on the application of either party, the other party interested having reasonable notice, according to the agreement of the parties.

Whereupon the defendant, by his counsel, filed a petition, which is as follows, to wit:

Petition of defendant.

To the judges of the circuit court of the United States for the district of Kentucky.

Ambrose Walden respectfully represents, that he entered into the agreement of record to try the cases of Bodley and Pogue, &c., against himself, and the heirs of Clarke against himself, and the heirs of Duncan against himself, with the sole view of having a trial at the next term; and, to attain that object, gave to the complainants concessions in each case, and made admissions favorable to the complainants, which he did on the sole ground, and with a view to the determination of a controversy protracted to a period of more than a quarter of a century, without any fault or default of his; that since said agreement, and contrary to its spirit, the complainants have continued the cause, and have been permitted to take new and additional testimony; that they failing to execute a survey under the interlocutory decree, your petitioner caused it to be executed; that the complainants, although notified, and most of them on the ground when the survey was made, declined to have any of their claims laid down. Your petitioner wishes no more surveying; he has none to do, and, *enjoined* as he is, he has no expectation that the complainants will be more vigilant to close the controversy, and deliver him possession, than they, and those under whom

the claim, have been for the last twenty-five years. He therefore prays that your honors will give him a rule nisi on the complainants to prepare their case, and to execute the survey ordered within some reasonable time. He also prays that no change in the pleadings and proof be allowed in future unless the causes be sent to the rules. He also prays that the injunctions granted to the heirs of Drake, those of Duncan, and those of Clarke, be discharged, as neither of said complainants have executed releases of error agreeably to law and the rules of this court.

R. WICKLIFFE, *For complainant.*

And on a subsequent day of the term aforesaid came the parties, (in the suits, Bodley's heirs, &c., against Walden, Duncan's heirs vs. Walden, and Clarke's heirs vs. Walden,) and filed the following agreement:

Agreement.

It is agreed, that every agreement or admission on file for the preparation of any of those cases for hearing, shall extend to all. It is further admitted that the complainants are respectively invested with the titles under the entries of Peter Johnson, and Tibbs and Clarke, and Tibbs and Crutcher, as alleged in their several bills. It is also agreed that the court may now give a final decree, without further ascertainment of the boundaries or positions of the particular tracts or settlements of each claimant or persons interested, and that the principles thereof shall be carried into effect as fully as if each tenement and each proprietor were specially named and identified.

JAS. HAGGIN, *For complainants.*
R. WICKLIFFE, *For defendant.*

And these causes are submitted to the court for decree.

And on a subsequent day of the term aforesaid, the court being now sufficiently advised of and concerning the premises, pronounced the following decree:

Decree.

The parties having, since the last interlocutory decree herein, at the present term, filed and had entered of record an agreement admitting a part of the facts, the uncertainty as to which constituted the difficulty in rendering a final decree, and having on both sides urged the court to pronounce a final decision, which will end their controversy at the present term; and it appearing to the court such decree may now be rendered, and in their execution applied with certainty to the ground, and thus carried into effect, the several causes will be now determined.

In the case of Benjamin Clarke's heirs against Ambrose Walden, it is decreed and ordered, that the said Ambrose Walden do, on or before the first day of January next, release and convey to the complainants, John Patton and Nancy Patton, his wife, Thomas Patton and Amanda Patton, his wife, James Campbell and Mary Campbell, his wife, James Lindsey and Nancy Lindsey, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, Mar-

tha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, devisees of David Duncan, by a proper deed, with a covenant of warranty against all persons claiming by, through, or under him, the said Ambrose Walden, all of the said tract or parcel of land mentioned and claimed by the complainants in their bill, containing, by estimate, 178 acres and 27 poles, being part of the settlement and pre-emption entered in the name of Peter Johnson, and the part of the tract of two hundred acres thereof purchased by said David Duncan from Arthur Fox, one of the patentees, which was conveyed to the said David Duncan by Thomas Bodley, by deed bearing date the 3d day of October, 1822, and bounded as follows: Beginning [a[] a stone near the corner of said Duncan's orchard; thence S. 38½° east, 138 poles, to a stake, corner to John Peed; thence with Peed's line S. 52° W., 252 poles, to a white oak and stone in William Deye's lane; thence N. 6° W., 159 poles, to a stake; thence N. 50° east, 168 poles, to the beginning, except thereout any part, if in fact there be any part, of the said 178 acres and 27 poles which may lay without the said entries in the name of Peter Johnson, one of 400 acres, and the other of 1,000 acres, constituting his settlement and pre-emption claim, or without the patents to Reed and Fox issued thereon, and at the same time within the entry of the defendant Ambrose Walden, for 1,333 acres, as said entries and patents laid down in the report and plat of the survey made under the former interlocutory decree in this cause, and approved at the present term. It is further decreed and ordered that the said Ambrose Walden be, and he is hereby, forever enjoined from all proceedings to recover the possession, or otherwise disturb the said complainants, or those claiming or holding under them, in the possession of the said parcel of land, which he is above directed to convey to them; and he is further enjoined from demanding, or otherwise enforcing, the payment from the present complainants of any obligation or claim taken or held by him on the said David Duncan in his lifetime, or any claim he may hold against the present complainants, or those holding under them, for the rents or use and occupancy of said tract or parcel of land above directed to be released and conveyed since the execution of the said writ of habere facias possessionem; but as to any part of the said tract of land claimed by the complainants in their bill, which may lie without the said entries, in the name of Peter Johnson, or without the said patents thereon, and at the same time within the defendant's entry, as laid down in said survey or report, (if there be any such part in fact;) and as to the rents or claim of the defendants for the use and occupancy thereof, the complainants' injunction is dissolved.

And it is further ordered and decreed, that the defendant pay to the complainants, the said devisees of David Duncan, their costs in this behalf expended, and may have execution, &c.

Decree.

In the case BENJAMIN CLARKE's heirs, complainants, against AMBROSE WALDEN, defendant.

In chancery.

It is decreed and ordered, that the defendant, Ambrose Walden, do, on or before the first day of January next, by a proper deed, with a covenant of warranty against all persons claiming by, through, or under him, the said Walden, release and convey to the said complainants, heirs at law of Benjamin Clarke, deceased; Judith Lacy, Susan Lacy, Mary Lacy, Thomas Lacy, Charles Lacy, Walter Lacy, and Daniel Lacy, (children and heirs at law of Elizabeth Lacy, deceased, one of the children and heirs at law of Benjamin Clarke, deceased;) Daniel Clarke, Susan Sumrall, the wife of Joseph K. Sumrall, (one of the daughters and heirs of said Benjamin Clarke, deceased;) Thomas Clarke, Mary H. McMillan, (daughter and heir of Mary McMillan, deceased, who was one of the daughters of said Benjamin Clarke and Virginia Clarke, all that tract or parcel of land mentioned and claimed by complainants in their bill of defendant Walden, being that part of the one-half of the settlement and pre-emption of one thousand four hundred acres, entered in the name of Peter Johnson, and granted by five several patents to John Reed and Arthur Fox, which was assigned in the partition between the said Reed and Fox, and sold by him to the said Benjamin Clarke, ancestor of the complainants,) which lie within the tract of one thousand three hundred and thirty-three acres, granted to the defendant Walden, excepting thereout the land without, and not included by the said entry in the name of Peter Johnson, or outside of the said patent issued thereon, and at the same time included within the said entry, in the name of the defendant, Ambrose Walden, as said entries are surveyed and represented in the report and plat made and returned in this cause under the former interlocutory decree, and confirmed at the present term.

And it is further decreed and ordered, that the said Ambrose Walden do, on [or] before the first day of January next, surrender and deliver over to the said complainants the possession of the said tract or parcel of land, which he is above ordered to convey to them, and the said complainants may, after that day, have the proper process to be issued by the clerk of this court, to have the possession thereof delivered to them.

And it is further decreed and ordered, that the defendant, Ambrose Walden, pay to the said complainants, the heirs of Benjamin Clarke, their costs in this behalf expended, and they have execution, &c.

The question on the claim of the complainants for rents, &c., asserted in their bill, is reserved and continued until the next term.

Decree.

In the case of THOMAS BODLEY'S heirs, Robert Pogue's heirs, Jonathan Rose, Benjamin Umstead, and the heirs of Abraham Drake, complainants,
against
AMBROSE WALDEN, defendant.

In chancery. Instituted in this court.

THOMAS BODLEY'S heirs and Robert Pogue's heirs, complainants,
against
THE SAME, defendant.

In chancery. Removed from Fleming circuit court.

It appears that Bodley's heirs and Pogue's heirs claim the same land on the same original titles in each suit, and that the other complainants claim only parcels thereof under the same titles by purchase from them, and these parcels are not defined. The two cases will therefore be considered under the agreement of the parties, and former orders made in pursuance thereof, as consolidated for the purpose of a decree on the merits between the complainants as one party against the one defendant, and thus considered in these cases.

It is decreed and ordered, that the defendant, Ambrose Walden, do, on or before the first day of January next, release and convey by a proper deed, with covenant of warranty against all persons claiming by, through, or under him, to the said complainants, to operate in such manner as to invest such of them as may be entitled as against the others, to any part of the premises in severalty, with the entire interest in such part, and to invest the others with interest in common jointly or otherwise, as they may be respectively entitled to between or among themselves, all that part of the said tract or parcel of land, in the complainants' bill mentioned, granted to the said Walden by patent, bearing date the 21st day of December, 1786, containing by survey 1333 acres, which is without and not included within the entry in the name of him, the said Walden, as the same is represented in the report and on the plat of the survey, made under the former interlocutory decree returned herein, and approved at the present term, excepting thereout the parts thereof which, by the above decrees in the case of David Duncan's heirs and Benjamin Clarke's heirs, against him, the said Walden; he is ordered to convey to the said Duncan's heirs, and to the said heirs of Clarke, and excepting also the tract of 150 acres held by Dale Carter, mentioned by the complainants in their , originally filed in this court; these parcels are not to be included in the conveyance.

And it is further decreed and ordered, that the said Ambrose Walden be, and he is hereby, forever enjoined from all proceedings on his said judgments in ejectment recovered in this court against the said Jonathan

Rose, &c., Charles Rector, &c., William Allen, &c., and Abraham Shockey, &c., or on either of them, to have the possession of any part of the said which he, the said Walden, is above directed to release and convey to the said complainants, or otherwise disturbing the said complainants, or those holding under them, in the possession thereof.

It is further decreed and ordered, that the said Ambrose Walden do, on or before the first day of January next, surrender and deliver over to the complainants the possession of all the said land which he is above ordered to release and convey to them, which is not now in their possession, or held under them; and the said complainants may, after said day, have the proper process to be issued by the clerk of this court to have delivered to them the possession thereof to be held by them, or such of them as may be entitled, as between themselves is provided above in the order for the conveyance.

And it is further decreed and ordered, that the complainants' said injunction against the said Walden, proceeding on his said judgments in ejectment, be, and the same is hereby, dissolved as to all the land recovered in said actions, which is included within the said entry in the name of said Walden; and, at the same time, within his said grant, for 1333 acres issued thereon, as the said entry and grant are represented on said surveyor's report, heretofore returned under the interlocutory decree, and approved at the present term, and bounded as follows: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 27° 25′ E., 297 poles, to a stake in a line of Walden's original survey in Tibbs' lane, at f; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed , 82 poles, N. 20° E. from said Walden's original corner, near Proctor's, at S; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of the said Walden's old lines, in cleared land, at h; thence with the old line N. 70° W., 220 poles, to a stake at i, another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to 2 buckeyes and sugar tree, at 7; and thence N. 52° 35′ E., 461 poles and 21 links, to the beginning; containing, by said survey, one thousand one hundred and forty acres, 2 roods, 22 poles; and that the complainants' injunction against judgments for costs recovered by said Walden in said actions at law be, and the same is hereby, dissolved, but without prejudice to the equity, in this behalf, of the said Jonathan Rose.

The question on the claim of the complainants, for the valuable and lasting improvements made by them on the premises, as they allege, and which may be on the land for which said judgments in ejectment were rendered, and which may be lost to them by this decree, is hereby reserved by the court.

It is further decreed and ordered, that the said decree pronounced by the Fleming circuit court of Kentucky at its March term, in the year 1825, in the said case of Thomas Bodley and Robert Pogue vs. the

said Ambrose Walden and others, then pending in said court, and which was afterwards, at the September term, 1828, of said court, on the said Walden's filing his answer, opened, and ordered by said court to be reheard, be, and the same is hereby, set aside, so far as the said decree embraces the part of the said tract of 1333 acres granted to the said Ambrose Walden, which is included in the entry of the said Walden, as the same is above established by this decree, and to this extent; the said decree of the Fleming circuit court, and also the said deed executed by the said James Crawford, as commissioner appointed by said court, bearing date the 6th day of September, 1825, and on the same day approved in open court, is annulled, and shall be held for naught.

It is further decreed and ordered, that the defendant Walden pay to the complainants, Bodley's and Pogue's heirs, Jonathan Rose, Benjamin Umstead, and , heirs of Abraham Drake, their costs expended in the prosecution of said suit instituted in this court, except such parts thereof as were incurred in their opposition to the validity of said Walden's entry, as the same has been established by the decree herein. And that the said complainants pay to the defendant Walden such parts of his costs in said suit as were expended in establishing his said entry. The clerk is directed to tax the costs and set off the smaller amounts against so much of the greater; and the party in whose favor the balance may appear may have execution therefor against the other.

Decree.

In the case of Bodley's heirs and Pogue's heirs against Walden, removed from the Fleming circuit court, each party must pay their own costs.

Decree in part suspended.

And afterwards, to wit, on a subsequent day of the term aforesaid and year aforesaid, the court not being sufficiently advised of and concerning the question on the claim of the complainants for compensation for the valuable and lasting improvements made by them on the land for which the judgments in ejectment were rendered, and not upon that part of said land which they recovered by the decree rendered herein, nor of the right of the complainants to retain the possession, shall be made, the said questions are still reserved, and the said matter continued until the next term. And it is therefore ordered, that that part of the decree rendered herein on yesterday, by which it is ordered and decreed that the complainants' injunction against the said Walden's proceeding on said judgments in ejectment be dissolved, shall be, and the same is hereby, suspended until the further order of this court.

Motion to suspend judgments at law.

And afterwards, to wit, at the May term of the court aforesaid and year 1835, came the defendant, by counsel, and moved the court to set aside and annul the order made in this cause on the 2d day of December last, suspending the operation of the defendant's judgments at law; which motion is laid over.

And afterwards, to wit, at the May term, 1835, the court being sufficiently advised of and concerning the question mentioned in the decree herein at the last term, and reserved by the court, of the claim of complainants for the lasting and valuable improvements made by them on the premises, and which may be on that part of the land for which the said judgment in ejectment and which was to the complainants by said decree:

Order appointing commissioners to make assessments, &c.

It is now ordered that James Morris, Jas. W. Waddle, James Marshall, Andrew Thompson, Athelston Owens, Abner Hord, William Hodge, and James Bailey, be, and they are hereby appointed, who, or any four of them being first sworn, shall go upon the said parcels of land, for which said judgments in ejectment were rendered against Jonathan Rose, &c., William Allen, &c., Charles Rutter, &c., Abraham Shockey, &c., Amzel Chapin, &c., and from their view and judgment, and the testimony of such witnesses as may be produced by either party, make the following assessments, and report an account thereof to this court.

1st. The damage and waste committed on said several parcels of land after the commencement of said actions, on the 22d day of February, 1797, distinguishing the damage and waste committed prior to, and what may have been committed subsequent to, 8th May, 1824.

2d. The rents and profits of the said several parcels of land after the said 22d day of February, 1797, distinguishing those which accrued prior to, and those which accrued subsequent to, the said 8th day of May, 1824.

3d. The value of the lasting and valuable improvements on said parcels of land, showing by whom and when made.

4th. The value of said parcels of land at the time of the assessment, regarding it as if said lasting and valuable improvements had never been made.

The said commissioners may meet, and proceed at the instance of either party having due notice.

And it is ordered, that the injunction shall remain until a decision on the above matter, and on the next day of the term aforesaid.

On motion of the defendant, it is ordered that the commissioners appointed herein, by the order on yesterday, may at the instance of the defendant, in addition to the assessment directed by said order, ascertain the value of the rents and profits of the land in the possession of the complainants, or those claiming under them since the pendency of the suits, and the damage and waste of soil and timber, and the value of all valuable and lasting improvements within and upon the whole land, claimed by the complainants in their bill, and not adjudged to them in this suit, which may not be embraced by the said order of yesterday, and report a separate account thereof.

Motion for leave to take out executions on judgments in ejectment.

November term, 1835.

The defendant, Ambrose Walden, moved the court, that he have

leave to take out executions on his judgments in ejectment as to all the defendants, except the defendants under whom Proctor and Blair claim, as set out in their petition, and as to them, unless they elect to prosecute the claim to pay for improvements in the name of those under whom they claim in this suit, and not further to prosecute their motion at law, to *reserve* and vacate the orders of this court set forth in said rule; and that in the event of the said Blair and Proctor electing to prosecute in this suit, then to enjoin them from proceeding on said rule. But the court dividing in opinion, the said Proctor and Blair, nor either of them, were put on their election, and the motion of the defendant Walden was overruled, which said Walden prays may be noted on the journal of this cause.

See the petition referred to in the above order, recorded on page 21 of this record.

Commissioners' report quashed, and other commissioners appointed, &c.

May term, 1836.

On motion of the complainants, it is ordered, that the report of the commissioners filed herein at the last term be, and the same is hereby, quashed. And it is further ordered, that James Morris, Jas. W. Waddle, Andrew Thompson, Athelston Owens, Abner Hord, William Hodge, and Leroy Dobyns, be, and they are hereby, appointed commissioners for the same purpose, [as] the former appointment was made; and the said commissioners, or any five of them, being first sworn, are directed to proceed and ascertain the several facts directed to be ascertained by the former orders of May, 1835, and in the manner therein directed; and in addition thereto the said commissioners are directed by the court, in the same manner, to ascertain the value of the lasting and valuable improvements made on the said land, recovered in said actions of ejectment, and not recovered by the complainants by the decree in this case prior to the 14th day of March, 1825.

And the value of said improvements made between that period and the first day of September, 1834, and of the value of such improvements that may have been made since that period.

And that in the assessments of the rents, waste and deterioration of soil, they ascertain and state the same for the same periods of time, and up to the time of making the assessments.

And the said commissioners are further directed to ascertain and report, the quantity of the several parcels of land held by the several tenants on said land, as well as the value thereof, exclusive of improvements.

To the entering of this order the defendant, Ambrose Walden, objects, and desires that the same be noted on the record.

And on a subsequent day of the term and year aforesaid, came again the parties by their counsel, and the complainants having failed to cause the commissioners appointed herein to ascertain the value of improvements on the land, &c., or to show any cause why they have not proceeded in the preparation:

And afterwards, to wit, at the May term, 1835, the court being sufficiently advised of and concerning the question mentioned in the decree herein at the last term, and reserved by the court, of the claim of complainants for the lasting and valuable improvements made by them on the premises, and which may be on that part of the land for which the said judgment in ejectment and which was to the complainants by said decree:

Order appointing commissioners to make assessments, &c.

It is now ordered that James Morris, Jas. W. Waddle, James Marshall, Andrew Thompson, Athelston Owens, Abner Hord, William Hodge, and James Bailey, be, and they are hereby appointed, who, or any four of them being first sworn, shall go upon the said parcels of land, for which said judgments in ejectment were rendered against Jonathan Rose, &c., William Allen, &c., Charles Rutter, &c., Abraham Shockey, &c., Amzel Chapin, &c., and from their view and judgment, and the testimony of such witnesses as may be produced by either party, make the following assessments, and report an account thereof to this court.

1st. The damage and waste committed on said several parcels of land after the commencement of said actions, on the 22d day of February, 1797, distinguishing the damage and waste committed prior to, and what may have been committed subsequent to, 8th May, 1824.

2d. The rents and profits of the said several parcels of land after the said 22d day of February, 1797, distinguishing those which accrued prior to, and those which accrued subsequent to, the said 8th day of May, 1824.

3d. The value of the lasting and valuable improvements on said parcels of land, showing by whom and when made.

4th. The value of said parcels of land at the time of the assessment, regarding it as if said lasting and valuable improvements had never been made.

The said commissioners may meet, and proceed at the instance of either party having due notice.

And it is ordered, that the injunction shall remain until a decision on the above matter, and on the next day of the term aforesaid.

On motion of the defendant, it is ordered that the commissioners appointed herein, by the order on yesterday, may at the instance of the defendant, in addition to the assessment directed by said order, ascertain the value of the rents and profits of the land in the possession of the complainants, or those claiming under them since the pendency of the suits, and the damage and waste of soil and timber, and the value of all valuable and lasting improvements within and upon the whole land, claimed by the complainants in their bill, and not adjudged to them in this suit, which may not be embraced by the said order of yesterday, and report a separate account thereof.

Motion for leave to take out executions on judgments in ejectment.

November term, 1835.

The defendant, Ambrose Walden, moved the court, that he have

leave to take out executions on his judgments in ejectment as to all the defendants, except the defendants under whom Proctor and Blair claim, as set out in their petition, and as to them, unless they elect to prosecute the claim to pay for improvements in the name of those under whom they claim in this suit, and not further to prosecute their motion at law, to *reserve* and vacate the orders of this court set forth in said rule; and that in the event of the said Blair and Proctor electing to prosecute in this suit, then to enjoin them from proceeding on said rule. But the court dividing in opinion, the said Proctor and Blair, nor either of them, were put on their election, and the motion of the defendant Walden was overruled, which said Walden prays may be noted on the journal of this cause.

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May term, 1836.

On motion of the complainants, it is ordered, that the report of the commissioners filed herein at the last term be, and the same is hereby, quashed. And it is further ordered, that James Morris, Jas. W. Waddle, Andrew Thompson, Athelston Owens, Abner Hord, William Hodge, and Leroy Dobyns, be, and they are hereby, appointed commissioners for the same purpose, [as] the former appointment was made; and the said commissioners, or any five of them, being first sworn, are directed to proceed and ascertain the several facts directed to be ascertained by the former orders of May, 1835, and in the manner therein directed; and in addition thereto the said commissioners are directed by the court, in the same manner, to ascertain the value of the lasting and valuable improvements made on the said land, recovered in said actions of ejectment, and not recovered by the complainants by the decree in this case prior to the 14th day of March, 1825.

And the value of said improvements made between that period and the first day of September, 1834, and of the value of such improvements that may have been made since that period.

And that in the assessments of the rents, waste and deterioration of soil, they ascertain and state the same for the same periods of time, and up to the time of making the assessments.

And the said commissioners are further directed to ascertain and report, the quantity of the several parcels of land held by the several tenants on said land, as well as the value thereof, exclusive of improvements.

To the entering of this order the defendant, Ambrose Walden, objects, and desires that the same be noted on the record.

And on a subsequent day of the term and year aforesaid, came again the parties by their counsel, and the complainants having failed to cause the commissioners appointed herein to ascertain the value of improvements on the land, &c., or to show any cause why they have not proceeded in the preparation:

Suspension of decree set aside, &c.

It is ordered, that the order made herein, on the last day of November term, 1834, suspending the part of the decree rendered on the day before, by which it was ordered that the complainants' injunction against said Walden's proceeding on said judgments is hereby set aside, and that the said decree shall stand as originally rendered, but shall be without prejudice to the claim of complainants to compensation for said improvements.

It is further ordered, that the complainants pay to the defendant his costs expended in the proceedings herein since the November term, 1831.

During the pendency of this suit, on the 25th day of November, 1834, the defendant Walden tendered to the court the following bill of exceptions, to wit:

Bill of exceptions.

MEMORANDUM.—After the court rescinded the order, entering the final decree, the defendant, Walden, by R. Wickliffe, his counsel, presented the following answer in each case, and also offered the following cross bill; and presented to the court the records referred to, or so much thereof, *and* was deemed necessary to sustain the statements in the cross bill, and moved the court to permit him to file the answers to the suits respectively, and also to file the said cross bill, agreeing that the said cross [bill] might or not, at the election of the party, or discretion of the court, operate as a supersedeas until the answers were filed, or that the causes might progress, the cross bill notwithstanding; but the court refused the said answers, or any of them, or the cross bill and bill for mesne profits to be filed; to which opinion of the court on rejecting the said answers, and each of them, and to file the cross bill and bill for mesne profits, the defendant Walden excepts.

THOMAS B. MONROE. [SEAL.]

The following are the answers and cross bill referred to in the foregoing bill of exceptions:

Amended and supplemental answer of Walden.

The amended and supplemental answer of Am'rose Walden, to a bill and amended bill filed by Thomas Bodley and Robert Pogue, Drake and others, in the circuit court of the United States, for the district of Kentucky, and to a bill filed by said Bodley and Pogue, &c., in the Fleming circuit court. This respondent not waiving his former answer, or either of them, or any part thereof, by way of amendment and supplement thereto, begs leave to answer and say, that long before the filing of either of the said bills, to wit, between the years 1790 and 1795, Lewis Craig, claiming to hold under him, entered upon his claim, and seized and possessed it by tenants claiming to hold under your respondent, and adverse to the claim of Johnson, and that of Bodley and Pogue, and every other whatever, except the claim of your orator.

That subsequently your orator entered himself, claiming the whole, and from the time that Craig and others took possession his claim has been occupied by some one or other, by an actual close and residence; which entry, and possession, and actual sealing and possession, continued up to the filing of the said last mentioned bill, and until this day; and which long and continued sealing and possessing this respondent relies on and insists bars any right to the complainants to recover, especially to recover under Bodley and Pogue, whom he charges never have had possession, unless they may be considered so by collusive contracts with the complainants, or the heirs of Drake, or their ancestor, or perhaps other contracts made with the tenants of your respondent, or by intrusions not known to him, which, if shewn or proven, he insists will be confined to three actual closes or residences.

This respondent sayeth, that under the decree of the Fleming circuit court the said Bodley and Pogue obtained a deed, and subsequently conveyed to one or more of the other complainants, or said Bodley did so, and he apprehends that several of such deeds may exist for parts of the land in contest; he also states, that from the great length of time in which he has been informed, most, if not all the persons against whom he recovered judgments in his ejectments, have died or moved off, and that they have been succeeded by the complainants, or those under whom they *they* claim, except Bodley and Pogue, who have in some way undertaken to protect such defendants, or those claiming under them, with their claim, so that to recover possession under said judgments, will be difficult if not impracticable to the full extent of his rights; and to revive his said judgments against the ter-tenants and heirs, will be attended with delay, costs, and vexations, too iniquitous (in his opinion) to be imposed upon him by the chancellor; he therefore prays, that if this honorable court shall decree in favor of the complainants, or any of them, any portions of the land, that this court will also decree, that the complainants shall give up the possession, and release all title to such parts as they shall not manifest a better right to, and that writs of assistance be awarded him to obtain such possession; and that in this respect, equal and mutual rights and equities be protected and guarded. This respondent prays, &c.

WICKLIFFE.

November term, 1834. Sworn to in open court by Robert Wickliffe.
Attest: JOHN H. HANNA, *C. C. C. K. D.*

Walden's answer to bill of revivor.

The answer of Ambrose Walden to a bill in equity exhibited against him, and to a bill of revivor filed by his heirs in the circuit [court] of the United States, for the district of Kentucky.

This defendant, saving and reserving to himself all benefit of exceptions, saith: That he knows nothing of the title set up by David Duncan or his heirs, of his own knowledge, and therefore requires proof. That he held, and that his heirs now hold, such titles, this defendant

denies. That his entry is vague or void for uncertainty, and pleads that it is special and surveyed according to its locative calls in part, if not in the whole; but as this is a matter of law, it is referred to the court. This defendant makes his entry and patent a part of his answer. And further answering, saith, that a long time since, he thinks between the years 1790 and 1795, one Lewis Craig, claiming to hold under your orator an undivided interest in his patented land aforesaid, entered upon the land in contest, and placed sundry persons thereon by actual settlements and residences upon the land; which settlements and residences, have been continued by succession ever since. That the entry of Craig and others was on the whole tract, and adverse to the title set up by the complainants and all the world, except your orator's claim under his patent aforesaid. Your respondent charges that he became, from the time of the taking the possession aforesaid, actually seized, as well as legally seized, under his patent of his whole lands adverse to the claims set up in the bills; which seizin, possession, and patent, this respondent pleads and relies on as a bar to all equity alleged and set up in said bill of complainants. This respondent for further answer alleges, that complainants, their ancestor, and others, have, by injunctions heretofore obtained, kept and held your respondent out of possession of the lands, until all or most of the defendants in the judgments have died or moved off as he believes, so that to revive the suits against the heirs and ter-tenants will be difficult and expensive, if practicable at law. He further charges that Bodley and Pogue procured a deed under their decree in Fleming county. This defendant therefore prays the court, that this court will in their decree, should they decree any part of the land to complainants, secure him against said deed to Bodley, and in the quiet possession and enjoyment of the residue to which the complainants show no title, and award him a writ of possession, &c. He denies all fraud, denies the right of complainants to a decree, and prays his costs. WICKLIFFE.

November term, 1834. Sworn to in open court by Robert Wickliffe.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Walden's answer to a bill in equity.

The answer of Ambrose Walden to a bill in equity exhibited against him by the heirs of Benjamin Clarke, in the circuit court of the United States, for the Kentucky district.

This respondent saving, &c., saith: That he knows nothing of his own knowledge of the title alleged by the complainants, and therefore requires the usual proof to be made, that when the claim of Peter Johnson is surveyed according to its locative calls, is a matter of law, which he submits to the court. This respondent says that his entry is special, and he thinks surveyed in part according to location, and he submits this also to the court. This respondent makes his entry *makes his entry* and patent a part of his answer. He denies the right or equity of the complainants to rely. And for further answer in bar and preclusion, sayeth, that about the year *the year* 1794, or before that time,

Lewis Craig and others made entry upon his patent, claiming an undivided interest therein, looking to and relying on this respondent for title; that said Craig seated, or caused said claim to be seated, by actual occupancy and settlements, have been succeeded by others down to the present moment; that all the defendants against whom he recovered are, as he verily believes, entered adverse to the claim of Bodley and Pogue, and he thinks many of them adverse to the claim of Johnson; which adverse possession and patent to the claim of the complainants, this respondent sets up, pleads, and relies on against the complainants, and as a bar by lapse of time against this honorable court's interfering with this respondent's possession or right of possession.

This respondent states that he hath been enjoined by the complainants and others so long, that most, if not all, of the defendants in his judgment of ejectments, have either died or moved away, and to revive said suits will be attended with costs, delay, and difficulty; that the said Bodley and Pogue, under their vague and void proceeding in Fleming circuit court, obtained a deed for your orator's land, except a small part held by Dale Carter. He therefore prays your honors, in decreeing relief to the complainants, to so far protect his rights as decreed him the possession of all not decreed to the complainants of the land in contest, and that mutual releases shall be executed, and such other orders and decrees be made, as to equity shall belong. This respondent, again denying the right of the complainants to a decree for his land, or any part of it, prays to be hence dismissed with costs.

R. WICKLIFFE.

November term, 1834. Sworn to in open court by Robert Wickliffe.
Attest: JOHN H. HANNA, *C. C. C. K. D.*

THOMAS BODLEY, &c.,
vs.
AMBROSE WALDEN.

Pleas before the honorable Thomas Todd and Harry Innis, judges of the seventh circuit court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, at the May term of said court, in the year 1809.

Be it remembered, that heretofore, to wit, on the 22d day of August, 1800, came Thomas Bodley, &c., in the clerk's office of the district court of the United States, in and for the Kentucky district, and filed the following bill against Ambrose Walden, to wit:

To the honorable the judges of the [district] court of the United States, for the Kentucky district, in chancery sitting, humbly complaining, showeth unto your honors, your orators, Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, citizens of Kentucky, that on the day of , 178 , Henry Crutcher and John Tibbs made the following entry with the county surveyor, to wit: Henry Crutcher and John Tibbs enters 10,000 acres of land on a Treasury warrant, No. 18747, as tenants in common, beginning at a large

denies. That his entry is vague or void for uncertainty, and pleads that it is special and surveyed according to its locative calls in part, if not in the whole; but as this is a matter of law, it is referred to the court. This defendant makes his entry and patent a part of his answer. And further answering, saith, that a long time since, he thinks between the years 1790 and 1795, one Lewis Craig, claiming to hold under your orator an undivided interest in his patented land aforesaid, entered upon the land in contest, and placed sundry persons thereon by actual settlements and residences upon the land; which settlements and residences, have been continued by succession ever since. That the entry of Craig and others was on the whole tract, and adverse to the title set up by the complainants and all the world, except your orator's claim under his patent aforesaid. Your respondent charges that he became, from the time of the taking the possession aforesaid, actually seized, as well as legally seized, under his patent of his whole lands adverse to the claims set up in the bills; which seizin, possession, and patent, this respondent pleads and relies on as a bar to all equity alleged and set up in said bill of complainants. This respondent for further answer alleges, that complainants, their ancestor, and others, have, by injunctions heretofore obtained, kept and held your respondent out of possession of the lands, until all or most of the defendants in the judgments have died or moved off as he believes, so that to revive the suits against the heirs and ter-tenants will be difficult and expensive, if practicable at law. He further charges that Bodley and Pogue procured a deed under their decree in Fleming county. This defendant therefore prays the court, that this court will in their decree, should they decree any part of the land to complainants, secure him against said deed to Bodley, and in the quiet possession and enjoyment of the residue to which the complainants show no title, and award him a writ of possession, &c. He denies all fraud, denies the right of complainants to a decree, and prays his costs. WICKLIFFE.

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Walden's answer to a bill in equity.

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This respondent saving, &c., saith: That he knows nothing of his own knowledge of the title alleged by the complainants, and therefore requires the usual proof to be made, that when the claim of Peter Johnson is surveyed according to its locative calls, is a matter of law, which he submits to the court. This respondent says that his entry is special, and he thinks surveyed in part according to location, and he submits this also to the court. This respondent makes his entry *makes his entry* and patent a part of his answer. He denies the right or equity of the complainants to rely. And for further answer in bar and preclusion, sayeth, that about the year *the year* 1794, or before that time,

Lewis Craig and others made entry upon his patent, claiming an undivided interest therein, looking to and relying on this respondent for title; that said Craig seated, or caused said claim to be seated, by actual occupancy and settlements, have been succeeded by others down to the present moment; that all the defendants against whom he recovered are, as he verily believes, entered adverse to the claim of Bodley and Pogue, and he thinks many of them adverse to the claim of Johnson; which adverse possession and patent to the claim of the complainants, this respondent sets up, pleads, and relies on against the complainants, and as a bar by lapse of time against this honorable court's interfering with this respondent's possession or right of possession.

This respondent states that he hath been enjoined by the complainants and others so long, that most, if not all, of the defendants in his judgment of ejectments, have either died or moved away, and to revive said suits will be attended with costs, delay, and difficulty; that the said Bodley and Pogue, under their vague and void proceeding in Fleming circuit court, obtained a deed for your orator's land, except a small part held by Dale Carter. He therefore prays your honors, in decreeing relief to the complainants, to so far protect his rights as decreed him the possession of all not decreed to the complainants of the land in contest, and that mutual releases shall be executed, and such other orders and decrees be made, as to equity shall belong. This respondent, again denying the right of the complainants to a decree for his land, or any part of it, prays to be hence dismissed with costs.

R. WICKLIFFE.

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THOMAS BODLEY, &c.,
vs.
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black ash and small buckeye, marked thus, I T, on the side of a buffalo road, leading from the Lower Blue Lick, a northeast corner, and about seven miles northeast by east, from the said Blue Licks, a corner of an entry of 20,000 acres, made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean; running thence with the said Tibbs, &c's, line, due east, 1600 poles; thence south, 1000 poles; thence west, 1600 poles; thence north, 1000 poles, to the beginning for quantity, as by an attested copy of the said entry hereto annexed, and which your orators pray may be made a part of this bill, will appear.

Your orators further show, that on the day of , the said entry was surveyed according to location and to law, and Henry Crutcher assigned his proportion of the land on the plat and certificate of survey to Robert Rutherford; and Willoughby Tibbs, heir at law of the said John Tibbs, sold after the patent had issued to him and Robert Rutherford, his interest to John Peyton, and conveyed it to him, who sold one moiety thereof to Charles Magill; and your orators purchased of the said Rutherford, Peyton, and Magill the said 10,000 acres of land, and have obtained a deed for the same.

Your orators further show unto your honors, that a certain Ambrose Walden, a citizen of the Commonwealth of Virginia, who, your orators pray, may be made a defendant to this bill, having on the 22d day of May, 1780, made the following entry with the county surveyor, to wit: "Ambrose Walden enters 1,333 acres upon a Treasury warrant, upon the east side of Jacob Johnson's settlement and pre-emption, on the waters of Johnson's fork, a branch of Licking, to include two cabins on the north side of said fork, built by Simon Butler, and to run eastwardly for quantity;" on the 29th day of November, in the year 1785, caused the same to be surveyed expressly contrary to location, and so as to interfere with your orators; refuses to convey such part of the land as is conveyed contrary to location. Your orators therefore show unto your honors that a certain Lewis Craig purchased of Simon Kenton, who was the locator of the said 1,333 acres of land, and entitled to one-third thereof for his services, his interest therein, and sold the same to Jonathan Rose, William Allen, and Charles Rector; and the said Rose and Allen sold to Abram Shockey and Amzel Chapin; and the said purchasers have been, and now are, in possession.

Your orators further show, that the defendant Walden, alleging that he had satisfied the claim of the said Kenton as locator, commenced ejectments in your honorable court against the said purchasers, or some of them; and, notwithstanding a division made by the county court, obtained a judgment against them.

Your orators show, that the said Chapin and Isaac Shockey, father to Abraham Shockey, under whom the said Abraham now holds, knowing that the title to the land which they hold of the said Ambrose Walden is inferior to that of your orators, have at different times applied to your orators, and have made an agreement for the places Abraham Shockey and Amzel Chapin had purchased as aforesaid of Rose and

Allen, who purchased of Lewis Craig; and your orators suffered them to become their tenants because they had always intended to contest the title of the said Walden to that part of his survey which is contrary to entry, of which the said Shockey, Chapin, and others, are now in possession; and they have hitherto waited to see the event of the suits of your honorable courts; but, although the said Walden must know that the claim of your orators to that part of the land is better than his, combining, &c.; he threatens to take out execution, &c.; all which actions are contrary to equity, &c.

In tender consideration whereof, and for as much as your orators are remediless at common law, to the end, therefore, that the said defendant may be compelled, upon his corporeal oath, true and perfect answer to make to all and singular the premises as fully as if the same were here again repeated and interrogated, and that, by a decree of this honorable court, the said defendant may be compelled to convey to your orators as much of his said survey as is made contrary to location; and that, until the matter is heard in equity, the said defendant and his agents may be enjoined and restrained from proceeding on the said judgments obtained in this court against the said Shockey, Chapin, and others; and that your orators may receive such other and further relief as to equity and good conscience belongs, may it please your honor, the premises considered, to grant to your orators the United States' writ of spa., &c., &c.

J. HUGHES,
Attorney for complainants.

MERCER COUNTY, *to wit:*

Personally appeared before me, a justice of the peace for said county, Thomas Bodley, Robert Pogue, and James Hughes, who, being duly sworn, made oath, that what is contained in this bill which comes within their own knowledge is true, and what they have received from the information of others they believe to be true.

Given under my hand this 18th day of August, 1800.

JOHN ROCHESTER.

KENTUCKY DISTRICT, *sct:*

An injunction is granted, agreeably to the prayer of this bill, upon condition that the complainants enter into bond with Wm. Murray, security, according to law.

Given under my hand this 5th day of September, 1800.

HARRY INNIS, *J. K. D.*

To the clerk of the district court for the United States for the Kentucky district:

The following is a copy of the injunction bond herein, to wit:

Know all men by these presents that we, Thomas Bodley, Robert Pogue, Robert Campbell, James Hughes, and William Murray, of the State of Kentucky, are held and firmly bound unto Ambrose Walden,

of the State of , in the full sum of five hundred dollars; to which payment, well and truly to be made to the said Ambrose Walden, his executors, administrators, or assigns, we bind ourselves, our heirs, executors, &c., jointly, severally, and firmly by these presents. Sealed with our seals, and dated this 6th day of September, 1800.

The condition of the above obligation is such, that whereas the above bound Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, have obtained an injunction to stay and enjoin all proceedings on five judgments, at the suit of the said Walden's lessee against the following persons: Lewis Craig and Jonathan Rose, Lewis Craig and Amzel Chapin, Lewis Craig and William Allen, Lewis Craig and Charles Rector, and said Craig and Abraham Shockey.

Now, if the said Thomas Bodley, Robert Pogue, Robert Campbell, and James Hughes, shall prosecute the said injunction with effect, or in case the same shall be dissolved, or the complainants' bill dismissed, the said Thos. Bodley, Robt. Pogue, Robt. Campbell, and James Hughes, and William Murray, will pay unto the said Ambrose Walden all his costs and damages which may be awarded in consequence of suing out the said injunction, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
ROBERT CAMPBELL, [SEAL.]
ROBERT POGUE, [SEAL.]
JAS. HUGHES, [SEAL.]
WILLIAM MURRAY. [SEAL.]

Signed and sealed in presence of—

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of June, and year 1802, (until which time this cause was continued,) came the defendant Walden, and filed his answer herein, to wit:

The answer of Ambrose Walden, a citizen of the Commonwealth of Virginia, to a bill of complaint exhibited to the honorable court of the United States for the Kentucky district, in chancery, by Thomas Bodley, Robt. Pogue, Robt. Campbell, and Jas. Hughes, citizens of the said State of Kentucky. This defendant, saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception to the manifold errors, insufficiencies, and uncertainties in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to answer unto, he answereth and saith, that on the 1st day of May, in the year 1780, this defendant made at Wilson's station, near Harrodsburg, in Kentucky, where the land office was opened for the purpose of drawing lots to determine the priority of making locations; and that on the 22d day of May (as this defendant believes) he made his entry, pursuant to the lot drawn on the said first day of May, and according to law, the said entry having begun at Jacob Johnson's N. E. corner of his pre-emption, as it then stood, as will appear more at large by having

reference to the copy of the entry filed in the suit in law between this defendant as plaintiff, and Amzel Chapin and others as defendants, which entry this defendant prays may be made a part of his answer, and is referred to, in the manner above mentioned, from a belief that it will be found in the papers in the said suit, this defendant having deposited the same with Wm. Clarke, esq., then an attorney employed by this defendant to institute an ejectment against the said Chapin and others for the recovery of the said land.

And this defendant further answering expressly charges, that the survey was made pursuant to said entry, and according to law, and not, as the complainants have alleged, variant from the said entry; which untrue allegation of the said complainants will be more fully evidenced by a comparison of the defendant's survey with his said entry, which entry does not appear to have been truly copied by the said complainants in the said bill.

And this defendant further answering saith, that Simon Kenton, the person mentioned as the locator for this defendant of the 1,333 acres now in dispute between the said complainants and this defendant, never had any interest whatever in the said 1,333 acres, or any part thereof, as this defendant, previous to the location thereof, had compensated the said Simon Kenton by assigning him, the said Kenton, lands elsewhere; so that the complainants can derive no title from the said Kenton, he, the said Kenton, never having had any therein. And this defendant, protesting against the claim of the said Henry Crutcher and John Tibbs, and of all others mentioned in the said bill, from whom the complainants pretend to derive a title in and to the said lands, under an entry made in the year 1783, as they state, presume that the said complainants, or those from whom they claim, have been led into an error in consequence of the said Jacob Johnson's having moved his original survey subsequent to the time when this defendant had made his entry and survey aforesaid, by the original survey of the said Jacob Johnson, which was made immediately before that of this defendant.

This defendant further answering saith, he regrets that he never received any information of the complainants' having obtained an injunction upon his judgments at law until the 4th of April, in the present year, 1802, otherwise an answer would have been prepared long since. This defendant denies the combination charged in the said bill; without that, that there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things this defendant is ready to aver and prove as this honorable court shall direct and award; and humbly prays that the said injunction may be dissolved, so that this defendant may proceed to obtain the possession of his land, so long and wrongfully withheld; and that this defendant may be dismissed with his costs and reasonable charges in this behalf wrongfully sustained.

AMBROSE WALDEN.

VIRGINIA, *corporation of Winchester, to wit:*

Ambrose Walden, the defendant above named, personally appeared before Lewis Wolfe, mayor of Winchester aforesaid, and made oath upon the holy evangelists that the facts herein stated, so far as he has spoken of his own knowledge, are true, and so far as he hath spoken on the information of others he believes them to be true.

Given under my hand and seal of mayoralty this 28th of April, 1802.

LEWIS WOLFE. [SEAL.]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of July and year aforesaid, came the complainants, by their counsel, and say that the allegations and that the statements in said answer, so far as they contradict said bill, are untrue.

And it is ruled, that the surveyor of county do go on the land in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

And afterwards, to wit, at rules held as aforesaid, in the month of November and year aforesaid, it is ruled, that either party have leave to take depositions generally.

And afterwards, to wit, at the May term of the seventh circuit court of the United States of America, in and for the Kentucky district, (until which time this cause was continued,) "it is ordered, that this suit be dismissed, the court not having jurisdiction thereof."

(Co. record, Bodley, &c., against Walden.)

Co. record—Bodley, &c., vs. *Walden.*

Pleas before the honorable Thomas Todd and Harry Innis, judges of the seventh circuit court of the United States of America, in and for the Kentucky district, at rules held in the clerk's office of the court aforesaid, in the month of April and year 1813.

Be it remembered, that heretofore, to wit, on the 27th day of September, in the year 1811, came Thomas Bodley, &c., into the clerk's office of this court, and filed the following bill against Ambrose Walden, to wit:

"To the honorable the judges of the circuit court of the United States for the seventh circuit, Kentucky district, in chancery sitting: Your orators, Thomas Bodley, James Hughes, and Robert Pogue, respectfully show, that about the 5th day of September, 1800, your orators, with a certain Robert Campbell, filed their bill in chancery against Ambrose Walden, a citizen of the State of Virginia, obtained an injunction and executed bond, agreeable to the order of the judge; a copy of which

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bill, order, and bond are hereto annexed, marked A, and prayed to be taken as part of this bill. Your orators further show, that since the commencement of said suit the said Robert Campbell has sold and conveyed his interest in the 10,000 acres of land in the bill mentioned to your orators.

Your orators further show to your honors, that at the last term of your honorable court, or at some term prior thereto, by a mistake, or from an impression that by a decision of the Supreme Court of the United States this court had not jurisdiction of the cause, under a belief that resident defendants were united in the bill with the defendant Walden, who was a citizen of Virginia, as they have been informed, the said suit was dismissed, when in fact the said Walden was the only defendant; and your orators are advised that this court has competent jurisdiction, and that their case is properly cognizable before your honors. Your orators further charge, that if the said suit is dismissed, it was done under the impression aforesaid, and without their knowledge or consent; that the said Walden, by some means unknown to your orators, has obtained from the clerk's office of this honorable court writs of habere facias possessionem on the judgments at law against the tenants in possession, who, at the time of commencing the suits in ejectment, held or claimed title under Lewis Craig, but who the said defendant Walden well knew had purchased of, and claimed title under, your orators, as set forth in their original bill herein referred to; and who, before said judgments were obtained, and ever since, for a lapse of near twelve years, have had peaceable possession of the premises under the claim of your orators aforesaid. But now, so it is, that the said Walden, combining, &c., has threatened under the writs aforesaid, so improperly and illegally obtained, to turn out of possession the persons who purchased from, and claim under your orators, and thereby injure and oppress your orators, and those claiming under them; and inasmuch as your orators are remediless by the strict rules of law, and can only be relieved in equity; to the end, therefore, that the said defendant Walden may, upon his corporal oath, true and perfect answer make to the premises, as fully as if the same were herein again repeated and interrogated; may it please your honors to reinstate their former injunction, or grant a new injunction to enjoin and restrain the said defendant, and all other persons, from further proceedings on the five judgments in ejectment, and writs of habere facias possessionem herein mentioned, until the case is heard in equity; and to grant to your orators the commonwealth's writ of subpœna, directed, &c.; and your orators will ever pray, &c.

THOMAS BODLEY,
JAMES HUGHES,
ROBERT POGUE,
J. BLEDSOE, *for Complts.*

FAYETTE COUNTY, *sct.*

Thos. Bodley, for himself and as attorney in fact for Jas. Hughes and Robert Pogue, this day made oath before me, a justice of the peace

for said county, that what is stated in the foregoing bill is true, to the best of his knowledge and belief.

Given under my hand this 29th day of September, 1811.

JOHN BRADFORD.

UNITED STATES OF AMERICA,
7th circuit and Kentucky district, to wit:

Let an injunction issue agreeable to the prayer of this bill, upon the complainants entering into bond in the penalty of $1000, with Achilles Sneed and John H. Hanna their security, conditioned according to law.

Given under my hand this twenty-seventh day of September, 1811.

THOS. TODD, *Ass Jus. S. C. U. S.*

To the clerk of the circuit court, U. S., in the 7th circuit and district of Kentucky.

The following is a copy of the injunction bond taken herein, to wit:

Know all men by these presents, that we, Thomas Bodley, James Hughes, Robert Pogue, and Achilles Sneed, are held and firmly bound, unto Ambrose Walden, in the just and full sum of one thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of September, 1811.

The condition of the foregoing obligation is such, that whereas the above bound Thomas Bodley, James Hughes, and Robert Pogue have obtained an injunction to stay proceedings on five judgments in ejectment and writs of habere facias possessionem, for 15 acres meadow, 100 [acres] arable, and 300 acres wood land, in the county of Mason, obtained by the said Walden against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin: Now, if the aforesaid Thomas Bodley, James Hughes, and Robert Pogue shall prosecute the said injunction with effect, or on failure thereof shall well and truly pay such cost and damages as shall be awarded against them, then the above obligation to be void, else to remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
ROBERT POGUE. [SEAL.]
ACHILLES SNEED. [SEAL.]

Witness—Samuel J. M. Major, as to A. Sneed's signature.

Signed by Samuel J. M. Major, by virtue of the power hereto annexed.

I, Thomas Bodley, for myself, and as attorney in fact for James Hughes and Robert Pogue, do hereby authorize Mr. Major to sign our names to an injunction bond, to be given in the circuit court of the United States, for the seventh circuit, Kentucky district, in a suit in

chancery, said Thomas Bodley and others against Ambrose Walden, and to do all legal acts necessary in the premises, hereby ratifying and confirming all and whatsoever said Major may legally do, by virtue of these presents.

Given under our hands and seals, this 27th day of September, 1811.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
By THOMAS BODLEY,
His Attorney in fact.
ROBERT POGUE, [SEAL.]
By THOMAS BODLEY,
His Attorney in fact.

Teste: J. BLEDSOE.

The following spa. in chancery was issued on the foregoing bill, to wit:

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Ambrose Walden, a citizen of the State of Virginia, to appear before the judges of our 7th circuit court of the United States, in and for the Kentucky district, at the Capitol, in Frankfort, on the first Monday in November next, to answer a bill of injunction exhibited against him by Thomas Bodley, James Hughes, and Robert Pogue, citizens of the State of Kentucky; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 27th day of September, 1811, and of our independence the 36th.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

MEMO.—This shall enjoin and restrain the within named defendant, and all other persons, from further proceedings on five judgments in ejectment, and the writs of habere facias possessionem obtained by the said defendant against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin, for 15 acres meadow, 100 acres arable, and 300 acres wood land, in the county of Mason, until the case is heard in equity upon bill for that purpose filed.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit:

"Executed." R. FERGUSON, *Deputy*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April, and year 1812, (until which time this cause was continued on the rules,) came the defendant Walden, and filed his answer herein, to wit:

for said county, that what is stated in the foregoing bill is true, to the best of his knowledge and belief.

Given under my hand this 29th day of September, 1811.

JOHN BRADFORD.

UNITED STATES OF AMERICA,
7th circuit and Kentucky district, to wit:

Let an injunction issue agreeable to the prayer of this bill, upon the complainants entering into bond in the penalty of $1000, with Achilles Sneed and John H. Hanna their security, conditioned according to law.

Given under my hand this twenty-seventh day of September, 1811.

THOS. TODD, *Ass Jus. S. C. U. S.*

To the clerk of the circuit court, U. S., in the 7th circuit and district of Kentucky.

The following is a copy of the injunction bond taken herein, to wit:

Know all men by these presents, that we, Thomas Bodley, James Hughes, Robert Pogue, and Achilles Sneed, are held and firmly bound, unto Ambrose Walden, in the just and full sum of one thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 27th day of September, 1811.

The condition of the foregoing obligation is such, that whereas the above bound Thomas Bodley, James Hughes, and Robert Pogue have obtained an injunction to stay proceedings on five judgments in ejectment and writs of habere facias possessionem, for 15 acres meadow, 100 [acres] arable, and 300 acres wood land, in the county of Mason, obtained by the said Walden against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin: Now, if the aforesaid Thomas Bodley, James Hughes, and Robert Pogue shall prosecute the said injunction with effect, or on failure thereof shall well and truly pay such cost and damages as shall be awarded against them, then the above obligation to be void, else to remain in full force and virtue.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
ROBERT POGUE. [SEAL.]
ACHILLES SNEED. [SEAL.]

Witness—Samuel J. M. Major, as to A. Sneed's signature.

Signed by Samuel J. M. Major, by virtue of the power hereto annexed.

I, Thomas Bodley, for myself, and as attorney in fact for James Hughes and Robert Pogue, do hereby authorize Mr. Major to sign our names to an injunction bond, to be given in the circuit court of the United States, for the seventh circuit, Kentucky district, in a suit in

chancery, said Thomas Bodley and others against Ambrose Walden, and to do all legal acts necessary in the premises, hereby ratifying and confirming all and whatsoever said Major may legally do, by virtue of these presents.

Given under our hands and seals, this 27th day of September, 1811.

THOMAS BODLEY, [SEAL.]
JAMES HUGHES, [SEAL.]
By THOMAS BODLEY,
His Attorney in fact.
ROBERT POGUE, [SEAL.]
By THOMAS BODLEY,
His Attorney in fact.

Teste: J. BLEDSOE.

The following spa. in chancery was issued on the foregoing bill, to wit:

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Ambrose Walden, a citizen of the State of Virginia, to appear before the judges of our 7th circuit court of the United States, in and for the Kentucky district, at the Capitol, in Frankfort, on the first Monday in November next, to answer a bill of injunction exhibited against him by Thomas Bodley, James Hughes, and Robert Pogue, citizens of the State of Kentucky; and this he shall in no wise omit, under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 27th day of September, 1811, and of our independence the 36th.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

MEMO.—This shall enjoin and restrain the within named defendant, and all other persons, from further proceedings on five judgments in ejectment, and the writs of habere facias possessionem obtained by the said defendant against Lewis Craig and Jonathan Rose, Lewis Craig and Charles Rutter, Lewis Craig and William Allen, Lewis Craig and Abraham Shockey, and Lewis Craig and Amzel Chapin, for 15 acres meadow, 100 acres arable, and 300 acres wood land, in the county of Mason, until the case is heard in equity upon bill for that purpose filed.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit:

"Executed." R. FERGUSON, *Deputy*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April, and year 1812, (until which time this cause was continued on the rules,) came the defendant Walden, and filed his answer herein, to wit:

The answer of Ambrose Walden, a citizen of the Commonwealth of Virginia, to a bill of complaint exhibited against him by Thomas Bodley, James Hughes, and Robert Pogue, citizens of the State of Kentucky, in the honorable the circuit court of the United States, for the seventh circuit, Kentucky district.

This respondent, saving and reserving to himself, now and at all times, the right and benefit of excepting to the errors and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, says, that [it] is true the complainants and a certain Robert Campbell filed a bill in chancery against this respondent, and obtained an injunction of the judgments in ejectment as stated by the complainants in their bill; to which bill this respondent filed his answer; a transcript of which answer, and the exhibits therein referred to, are hereto annexed, and made a part of this answer. It is also true that this respondent obtained from the clerk's office of this honorable court writs of possession for the land which he had recovered in the said suits at law, which he supposed himself entitled to, after being kept ten or twelve years out of the use and possession of his property by the said complainants; and although the manner in which he obtained the writs alluded to may be unknown to the complainants, it is not so to the clerk of this honorable court; and the insinuation made by the complainants in their bill, that the said writs were illegally or improperly obtained, is without grounds or truth. This respondent knows nothing as to the other statements and allegations made by the complainants in their bill, and therefore requires them to be supported by full proof. This respondent prays this honorable court to dissolve the complainants' injunction, so that this respondent may have the benefit of his judgments at law, and that the complainants' bill may be dismissed, and the defendant recover of the complainants his costs in this behalf expended, &c.

FRANKLIN COUNTY, *to wit:*

This day Ambrose Walden made oath before me, Martin D. Hardin, a justice of the peace for said county, that what is stated in the foregoing answer in relation to his own transactions is true, and what relates to the transactions of others, he believes to be true.

Given under my hand, this 9th day of April, 1812.

M. D. HARDIN.

And afterwards, to wit, at the May term of the court aforesaid, and year 1812.

This day this cause came on to be heard upon the motion of the said defendant for a dissolution of the injunction obtained herein, and the court being sufficient advised of and concerning the same, do judge and order, that the said injunction be dissolved, and that the said defendant may proceed to have the benefit of his several judgments at common law, which was enjoined herein, and also his costs by him in this behalf expended.

And afterwards, to wit, at rules held in the clerk's office of the court

aforesaid, in the month of April, and year 1813, (until which time this cause was continued,) came the complainants, and dismissed this suit.

Exhibits.

300 acres withdrawn; surveyed 2000 of No. 11,203, assigned to David Blanchard, August 1st, 1783.

John Tibbs, &c's, 20,000 acre entry.

31st July, 1783. John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLain, enters 20,000 acres of land on Treasury warrants, to be held by them as tenants in common, according to the following proportions, to wit: John Tibbs, 5,000 on No. 10337, 10338, 10340, and a part of the warrant No. 10335; John Clark, 1,000 on part of warrant No. 10793; John Sharpe, 4,000 acres on part of warrant No. 11203; David Blanchard, 5,000 acres on warrant No. 11745, 11747, and 11748; and Alexander McLean, 5,000 acres on part of warrant No. 10335, and part of warrant No. 15193 on McConnell's fork of Licking, beginning at a large black ash and a small buckeye marked thus, I. T., on the side of a buffalo road leading from the Lower Blue Licks, a N. E. course, and about 7 miles N. E. and by east from the said Blue Licks, running thence due north 1,264 poles; thence 2,529.8 poles, east; thence S. $1{,}264\frac{3}{10}$ poles; thence west 2,529.8 poles, to the beginning.

(A copy.) Teste: JNO. M. FOSTER, *R. L. Off.*
By C. H. FENWICK, *D. R.*

Jno. Taylor's 3,000 acre entry.

May 22d, 1780. John Taylor enters 3,000 acres upon Treasury warrants, adjoining John Walden on the north side of Johnson's fork, on the east and S. east sides running up and down the creek, and north for quantity, to include an improvement made by Jacob Drennon and Simon Butler.

(A copy.) Att: JNO. M. FOSTER, *R. L. O.*
By E. A. McCURDY, *D. R.*

A. Walden's 1,333 acre entry.

May 22d, 1780. Ambrose Walden enters 1,333 acres upon a Treasury warrant, upon the E. side of Jacob Johnson's settlement and preemption on the waters of Johnson's fork, a branch of Licking, to include two cabins on the north side of said fork built by Simon Butler, and to run eastwardly for quantity.

Crutcher and Tibbs' 10,000 acre entry.

Henry Crutcher and John Tibbs enters 10,000 acres of land on a Treasury warrant, No. 18,747, as tenant in common, beginning at a large black ash and small buckeye marked thus, I. T., on the side of a buffalo road leading from the Lower Blue Licks, a N. E. course, about 7 miles N. E. by E. from the said Blue Licks, a corner of an entry of

20,000 acres made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean; running thence with the said Tibbs, &c's, line due east, 1,600 poles; thence S., 1,000 poles; thence west, 1,600 poles; thence north, 1,000 poles, to the beginning. October 17th, 1783.

(A copy.) Teste: ACHILLES SNEED, *D. C. C. A.*

Peter Johnson's 400 acre entry.

21st February, 1780. Peter Johnson's heir, &c., enters 400 acres in Kentucky, by virtue of a certificate, &c., lying on the east side of the Buffalo road leading from the Blue Licks to Limestone, 9 miles from the Lick on the upper road.

(A copy.) Teste: JOHN M. FOSTER, *R. L. O.*

Peter Johnson's 1,000 acre entry.

30th May, 1783. Peter Johnson, heir at law of Jacob Johnson, deceased, enters 1,000 acres of land on a pre-emption warrant, No. 2,346 on the waters of Licking creek, about 10 miles from the Blue Licks, adjoining said Johnson's settlement on the south and east, and on the north and west.

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*

Rutherford and Tibbs' patent for 1,000 acres.

Beverley Randolph, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a land office Treasury warrant, No. 18,747, issued the 14th August, 1783, there is granted by the said Commonwealth unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law of John Tibbs, deceased, a certain tract or parcel of land containing 10,000 acres, by survey bearing date 14th day of March, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning at a large black ash and a small buckeye, marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about 8 miles N. E. by E. from the said Licks; running thence due east, 600 poles, to a small creek; thence continuing the same course, 300 poles, to a small creek; thence continuing the same course, 700 poles, in all amount to 1,600 poles, and cornering at a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek; thence continuing the same course, 600 poles, and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at 800 poles; thence continuing the same course, 60 poles, crossed the said fork again; thence continuing the same course, 740 poles, in all amounting to 1,600 poles, and cornering in a large sink hole, on two red oaks and a honey locust; thence due north, at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course at 60 poles, crossed the said fork again; continuing the same course 60 poles, crossed the said fork the third time,

amounting to 1,800 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs, and their heirs, forever.

In witness whereof the said Beverley Randolph, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLEY RANDOLPH. [SEAL.]

Robert Rutherford and Willoughby Tibbs are entitled to the within mentioned tract of land.

JNO. HAURA, *R. L. O.*

Patent to A. Walden of 1,333 acres.

Patrick Henry, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of a land office Treasury warrant, No. 2,692, issued the 18th day of February, 1780, by these is granted by the said commonwealth unto Ambrose Walden, a certain tract or parcel of land containing 1,333 acres, by survey bearing date the 29th day of November, 1785. lying and being in the county of Fayette, on the waters of Johnson's fork of Licking, adjoining Jacob Johnson's pre-emption on the east side, and bounded as followeth, to wit: Beginning on his N. E. corner, a buckeye and hoop ash trees; thence S. sixty-eight degrees E., 450 poles, to red oaks and a honey locust; thence S. 22° W., 473¾ poles, to an ash, Spanish oak, mulberry, and buckeye trees, standing on the bank of a small branch; thence N. 68° W., 450 poles, to a hickory, red oak, and white oak, on the S. E. of Johnson's pre-emption, and with a line of the same, N. 22° E., 473¾ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Ambrose Walden, and his heirs, forever.

In witness whereof the said Patrick Henry, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 21st day of November, A. D. 1786, and of the commonwealth the eleventh.

P. HENRY. [SEAL.]

Ambrose Walden is entitled to the within mentioned tract of land.

JOHN HARRIE, *R. L. O.*

Rutherford's Patent.

Beverley Randolph, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a land office Treas-

20,000 acres made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean; running thence with the said Tibbs, &c's, line due east, 1,600 poles; thence S., 1,000 poles; thence west, 1,600 poles; thence north, 1,000 poles, to the beginning. October 17th, 1783.

(A copy.) Teste: ACHILLES SNEED, *D. C. C. A.*

Peter Johnson's 400 acre entry.

21st February, 1780. Peter Johnson's heir, &c., enters 400 acres in Kentucky, by virtue of a certificate, &c., lying on the east side of the Buffalo road leading from the Blue Licks to Limestone, 9 miles from the Lick on the upper road.

(A copy.) Teste: JOHN M. FOSTER, *R. L. O.*

Peter Johnson's 1,000 acre entry.

30th May, 1783. Peter Johnson, heir at law of Jacob Johnson, deceased, enters 1,000 acres of land on a pre-emption warrant, No. 2,346 on the waters of Licking creek, about 10 miles from the Blue Licks, adjoining said Johnson's settlement on the south and east, and on the north and west.

(A copy.) Teste: JNO. M. FOSTER, *R. L. O.*

Rutherford and Tibbs' patent for 1,000 acres.

Beverley Randolph, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a land office Treasury warrant, No. 18,747, issued the 14th August, 1783, there is granted by the said Commonwealth unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law of John Tibbs, deceased, a certain tract or parcel of land containing 10,000 acres, by survey bearing date 14th day of March, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning at a large black ash and a small buckeye, marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about 8 miles N. E. by E. from the said Licks; running thence due east, 600 poles, to a small creek; thence continuing the same course, 300 poles, to a small creek; thence continuing the same course, 700 poles, in all amount to 1,600 poles, and cornering at a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek; thence continuing the same course, 600 poles, and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at 800 poles; thence continuing the same course, 60 poles, crossed the said fork again; thence continuing the same course, 740 poles, in all amounting to 1,600 poles, and cornering in a large sink hole, on two red oaks and a honey locust; thence due north, at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course at 60 poles, crossed the said fork again; continuing the same course 60 poles, crossed the said fork the third time,

amounting to 1,800 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs, and their heirs, forever.

In witness whereof the said Beverley Randolph, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLEY RANDOLPH. [SEAL.]

Robert Rutherford and Willoughby Tibbs are entitled to the within mentioned tract of land.

JNO. HAURA, *R. L. O.*

Patent to A. Walden of 1,333 *acres.*

Patrick Henry, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of a land office Treasury warrant, No. 2,692, issued the 18th day of February, 1780, by these is granted by the said commonwealth unto Ambrose Walden, a certain tract or parcel of land containing 1,333 acres, by survey bearing date the 29th day of November, 1785, lying and being in the county of Fayette, on the waters of Johnson's fork of Licking, adjoining Jacob Johnson's pre-emption on the east side, and bounded as followeth, to wit: Beginning on his N. E. corner, a buckeye and hoop ash trees; thence S. sixty-eight degrees E., 450 poles, to red oaks and a honey locust; thence S. 22° W., 473¾ poles, to an ash, Spanish oak, mulberry, and buckeye trees, standing on the bank of a small branch; thence N. 68° W., 450 poles, to a hickory, red oak, and white oak, on the S. E. of Johnson's pre-emption, and with a line of the same, N. 22° E., 473¾ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Ambrose Walden, and his heirs, forever.

In witness whereof the said Patrick Henry, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 21st day of November, A. D. 1786, and of the commonwealth the eleventh.

P. HENRY. [SEAL.]

Ambrose Walden is entitled to the within mentioned tract of land.

JOHN HARRIE, *R. L. O.*

Rutherford's Patent.

Beverley Randolph, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a land office Treas-

ury warrant, No. 18,747, issued the 4th day of August, 1785, there is granted by the said commonwealth to Robert Rutherford, assignee of Henry Crutcher; and unto Willoughby Tibbs, heir at law of John Tibbs, dec'd, a certain tract or parcel of land containing 10,000 acres, by survey date the 14th day of March, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning at a laige black ash and a small buckeye, marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Lime stone, about 8 miles N. E. by E from the said Licks; running thence due east, 600 poles, to a small creek; thence continuing the same course, 300 poles, to a small creek; thence continuing the same course, 700 poles; amounting, in all, to 1,600 poles, and cornering at a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek; thence continuing the same course 600 poles, and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at 800 poles; continuing the same course 60 poles, crossed the said fork again; thence continuing the same course 740 poles, in all, amounting to 1,600 poles, and cornering in a large sink hole on two red oaks and honey locust; thence due north, at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course, at 60 poles, crossed the said fork the third time, amounting to 1800 poles to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs, and their heirs, forever.

In witness whereof the said Beverly Randolph, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLEY RANDOLPH,

(A copy)—Teste: JNO. M. FOSTER, *R. L. O.*

By E. A. MACURDY, *D. R.*

Reed & Fox's patent.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a part of a land office pre-emption warrant, No. 2,346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, dec'd, a certain tract or parcel of land containing 250 acres by survey, bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the west corner, and bounded as followeth, to wit: Beginning at two honey locusts and pea locusts, the west corner of said settlement; thence S. 39° E., 126½ poles, to a large sugar tree near a branch; thence S. 51° W., 110 poles, to two hackberries and elms; thence N. 39° W., 236½ poles, to a white ash and buckeye; thence N. 51° E.,

236½ poles, to two small hickories on a ridge; thence S. 39° E., 110 poles, to a stake in said settlement line; thence with said line S. 51° W., 126½ poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor.

JAMES BROWN, *Secretary.*

(A copy)—Teste: JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Thos. Bodley's patent for 16,000 *acres.*

James Garrard, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of John Tibbs 5,000 acres on warrants Nos. 10,337, 10,338, 10,340, and part of 10,335, John Clarke 1,000 acres on warrant No. 11,203, David Blanchard 5,000 acres on warrants Nos. 11,745, 11,747, and 11,748, and Alexander McLean 5,000 acres on part of warrant No. 10,335 and 15,193, there is granted by the said commonwealth unto Thos. Bodley, assignee of David Baldwin, who was assignee of Willoughby Tibbs, David Blanchard, Alexander McLean, and John Sharp, a certain tract or parcel of land containing 16,000 acres by survey, bearing date the 8th day of June, 1796, lying and being in Mason county, and bounded as followeth, to wit: Beginning at a large ash and small buckeye stump, on which stood the trees called for in the entry, which *was* marked I. T., by the side of the road leading from the Lower Blue Licks to Limestone; running thence N. 1,264 poles, crossing a large creek, at 380 poles, to a white ash and honey locust; thence E. 1,540 poles, crossing Lee's creek, at 110 poles, to a stake in the line of Thomas Marshall's 10,500 acre survey; thence with said line S. 22½° W., 438 poles, to his corner, a honey locust and buckeye; thence S. 86° E., 935 poles, crossing Mill creek, at 538 poles, to a stake; thence S. 785 poles to a stake; thence west 2,324 poles to the beginning, with its appurtenances; to have and to hold the said tract of land, with its appurtenances, to the said Thomas Bodley and his heirs forever.

In witness whereof the said James Garrard, esq., governor of the Commonwealth of *Virginia*, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Frankfort, on the 21st day of April, in the year of our Lord one thousand seven hundred and ninety-eight, and of the commonwealth the sixth.

JAMES GARRARD. [SEAL.]

ury warrant, No. 18,747, issued the 4th day of August, 1785, there is granted by the said commonwealth to Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law of John Tibbs, dec'd, a certain tract or parcel of land containing 10,000 acres, by survey date the 14th day of March, 1784, lying and being in the county of Fayette, and bounded as followeth, to wit: Beginning at a large black ash and a small buckeye, marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Lime stone, about 8 miles N. E. by E from the said Licks; running thence due east, 600 poles, to a small creek; thence continuing the same course, 300 poles, to a small creek; thence continuing the same course, 700 poles; amounting, in all, to 1,600 poles, and cornering at a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek; thence continuing the same course 600 poles, and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at 800 poles; continuing the same course 60 poles, crossed the said fork again; thence continuing the same course 740 poles, in all, amounting to 1,600 poles, and cornering in a large sink hole on two red oaks and honey locust; thence due north, at 480 poles, crossed the main branch of the east fork of Licking; continuing the same course, at 60 poles, crossed the said fork the third time, amounting to 1800 poles to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs, and their heirs, forever.

In witness whereof the said Beverly Randolph, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

BEVERLEY RANDOLPH,

(A copy)—Teste: JNO. M. FOSTER, *R. L. O.*

By E. A. MACURDY, *D. R.*

Reed & Fox's patent.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a part of a land office pre-emption warrant, No. 2,346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, dec'd, a certain tract or parcel of land containing 250 acres by survey, bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the west corner, and bounded as followeth, to wit: Beginning at two honey locusts and pea locusts, the west corner of said settlement; thence S. 39° E., 126½ poles, to a large sugar tree near a branch; thence S. 51° W., 110 poles, to two hackberries and elms; thence N. 39° W., 236½ poles, to a white ash and buckeye; thence N. 51° E.,

236½ poles, to two small hickories on a ridge; thence S. 39° E., 110 poles, to a stake in said settlement line; thence with said line S. 51° W., 126½ poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor.

JAMES BROWN, *Secretary.*

(A copy)—Teste: JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Thos. Bodley's patent for 16,000 *acres.*

James Garrard, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of John Tibbs 5,000 acres on warrants Nos. 10,337, 10,338, 10,340, and part of 10,335, John Clarke 1,000 acres on warrant No. 11,203, David Blanchard 5,000 acres on warrants Nos. 11,745, 11,747, and 11,748, and Alexander McLean 5,000 acres on part of warrant No. 10,335 and 15,193, there is granted by the said commonwealth unto Thos. Bodley, assignee of David Baldwin, who was assignee of Willoughby Tibbs, David Blanchard, Alexander McLean, and John Sharp, a certain tract or parcel of land containing 16,000 acres by survey, bearing date the 8th day of June, 1796, lying and being in Mason county, and bounded as followeth, to wit: Beginning at a large ash and small buckeye stump, on which stood the trees called for in the entry, which *was* marked I. T., by the side of the road leading from the Lower Blue Licks to Limestone; running thence N. 1,264 poles, crossing a large creek, at 380 poles, to a white ash and honey locust; thence E. 1,540 poles, crossing Lee's creek, at 110 poles, to a stake in the line of Thomas Marshall's 10,500 acre survey; thence with said line S. 22½° W., 438 poles, to his corner, a honey locust and buckeye; thence S. 86° E., 935 poles, crossing Mill creek, at 538 poles, to a stake; thence S. 785 poles to a stake; thence west 2,324 poles to the beginning, with its appurtenances; to have and to hold the said tract of land, with its appurtenances, to the said Thomas Bodley and his heirs forever.

In witness whereof the said James Garrard, esq., governor of the Commonwealth of *Virginia*, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Frankfort, on the 21st day of April, in the year of our Lord one thousand seven hundred and ninety-eight, and of the commonwealth the sixth.

JAMES GARRARD. [SEAL.]

By the Governor:

HARRY TOULMIN, *Secretary.*

(A copy.) Teste:

JOHN M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 250 acres.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted, by the said commonwealth, unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law of Jacob Johnson, a certain tract or parcel of land, containing 250 acres, by survey bearing date the 11th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the south, and bounded as followeth, to wit: Beginning at a honey locust and black ash, in the forks of a branch; thence N. 51° E., 126½ poles, to a buckeye and white ash; thence N. 39° E., 110 [poles,] to a black hickory; thence S. 51° W., 236½ poles, to two white oaks; thence N. 39° E., 236½ poles, to two white oaks; thence N. 39° E., 236½ poles, to two hackberries and elm; thence N. 51° E., 110 poles, to a large sugar tree in said settlement line; thence with said settlement line S. 39° E., 126½ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with the appurtenances, to the said John Reed and Arthur Fox, and his heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Sec'y.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 400 acres.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a certificate for settlement right, agreeably to an act of the Virginia assembly passed in the year 1779, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 400 acres, by survey bearing date the 9th of April, 1789, lying and being in the county of Bourbon, on the Upper Buffalo road, leading from the Lower Blue Licks to Limestone, 9 miles from said Licks, on the east side of

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said road, and bounded as followeth, to wit: Beginning at two honey locusts and a pea locust on the east side of said road; thence N. 51° E., 253 poles, to a cherry tree, black walnut, and white hickory, on the east side of said road; thence S. 29° E., 253 poles, to a willow, oak, hackberry, and honey locust, thence S. 51° W., 253 poles, to a black ash and honey locust, in the forks of a branch; thence N. 39° W., 253 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs, forever.

In testimony whereof the said Isaac Shelby, governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of said Commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the Commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Secretary.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 250 acres.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a part of a land office pre-emption warrant, No. 2346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement upon the north, and bounded as followeth, to wit: Beginning at a black walnut, cherry, and white hickory, corner to said settlement; thence S. 51° W., 126½ poles, to a stake; thence N. 39° W., 110 poles, to two small hickories on a ridge; thence N. 51° E., 236½ poles, to a buckeye and small hickory; thence S. 39°, 236½ poles, to two small white ashes; thence S. 51° W., 110 poles, to a white hickory near a small branch in a line of said settlement; thence N. 39° W., 126½ poles, with said line, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and *his* heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Sec'y.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

By the Governor:

HARRY TOULMIN, *Secretary.*

(A copy.) Teste:

JOHN M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 250 *acres.*

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of part of a land office pre-emption warrant, No. 2346, there is granted, by the said commonwealth, unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law of Jacob Johnson, a certain tract or parcel of land, containing 250 acres, by survey bearing date the 11th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement on the south, and bounded as followeth, to wit: Beginning at a honey locust and black ash, in the forks of a branch; thence N. 51° E., 126½ poles, to a buckeye and white ash; thence N. 39° E., 110 [poles,] to a black hickory; thence S. 51° W., 236½ poles, to two white oaks; thence N. 39° E., 236½ poles, to two white oaks; thence N. 39° E., 236½ poles, to two hackberries and elm; thence N. 51° E., 110 poles, to a large sugar tree in said settlement line; thence with said settlement line S. 39° E., 126½ poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with the appurtenances, to the said John Reed and Arthur Fox, and his heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Sec'y.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 400 *acres.*

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a certificate for settlement right, agreeably to an act of the Virginia assembly passed in the year 1779, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 400 acres, by survey bearing date the 9th of April, 1789, lying and being in the county of Bourbon, on the Upper Buffalo road, leading from the Lower Blue Licks to Limestone, 9 miles from said Licks, on the east side of

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said road, and bounded as followeth, to wit: Beginning at two honey locusts and a pea locust on the east side of said road; thence N. 51° E., 253 poles, to a cherry tree, black walnut, and white hickory, on the east side of said road; thence S. 29° E., 253 poles, to a willow, oak, hackberry, and honey locust, thence S. 51° W., 253 poles, to a black ash and honey locust, in the forks of a branch; thence N. 39° W., 253 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and their heirs, forever.

In testimony whereof the said Isaac Shelby, governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of said Commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the Commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Secretary.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 250 *acres.*

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that, by virtue and in consideration of a part of a land office pre-emption warrant, No. 2346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres, by survey bearing date the 10th day of April, 1789, lying and being in the county of Bourbon, adjoining their settlement upon the north, and bounded as followeth, to wit: Beginning at a black walnut, cherry, and white hickory, corner to said settlement; thence S. 51° W., 126½ poles, to a stake; thence N. 39° W., 110 poles, to two small hickories on a ridge; thence N. 51° E., 236½ poles, to a buckeye and small hickory; thence S. 39°, 236½ poles, to two small white ashes; thence S. 51° W., 110 poles, to a white hickory near a small branch in a line of said settlement; thence N. 39° W., 126½ poles, with said line, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox, and *his* heirs, forever.

In testimony whereof the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Sec'y.*

(A copy.) Teste:

JNO. M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Reed and Fox's patent for 250 acres.

Isaac Shelby, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a land office preemption warrant, No. 2346, there is granted by the said commonwealth unto John Reed and Arthur Fox, assignees of Peter Johnson, heir at law to Jacob Johnson, deceased, a certain tract or parcel of land, containing 250 acres by survey, bearing date 10th day of April, 1789, lying and being in the county of Bourbon, and bounded as followeth, to wit: Beginning at a willow, oak, hackberry, and honey locust, the west corner of their settlement; thence north 39° west, 126½ poles, to a white ; thence north 51° east, 110 poles, to two small white ashes; thence south 39° east, 236½ poles, to a buckeye and white oak; thence south 51° east, 236½ poles, crossing a large branch to a hickory; thence north 39° west, 110 poles, to a buckeye and white ash, in said settlement line; thence with said line to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said John Reed and Arthur Fox and their heirs, forever.

In testimony whereof, the said Isaac Shelby, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Lexington, on the 20th day of February, A. D. 1793, and of the commonwealth the first.

ISAAC SHELBY. [SEAL.]

By the Governor:

JAMES BROWN, *Secretary.*

(A copy.)—Teste: JOHN M. FOSTER, *R. L. O.*
By C. H. FENWICK, *D. R.*

Deed—Crawford, commissioner, to Bodley and Pogue.

This indenture, made this 6th day of September, A. D. 1825, between James Crawford, commissioner, for and on behalf of Ambrose Walden, and the unknown heirs of John Walden, deceased, of the one part, and Robert Pogue and Thomas Bodley, of the other part. Whereas by a decree of the Fleming circuit court, at their March term, 1825, in a suit in chancery wherein Thomas Bodley and Robert Pogue, are complainants, and Ambrose Walden, the unknown heirs of John Walden, deceased, John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, are defendants. It is amongst other things decreed and ordered, that the defendant Ambrose Walden do, on or before the first day of June next, release and convey to the complainants the whole of the tract of land, containing by survey 1333⅓ acres, (except 150 acres sold and conveyed by said Ambrose Walden, and which is now in the possession of Dale Carter, who was heretofore a defendant in this suit, but as to whom the bill has been dismissed,) and in case the said Ambrose Walden shall fail or refuse to make said conveyance, then James Crawford is hereby appointed commissioner to release and convey the

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said tract of land, except as aforesaid *to*, "to the commissioners;" and the said James Crawford is also appointed commissioner to convey for and on behalf of the unknown heirs of John Walden, deceased, the whole of the tract of 1666⅔ acres of land, according to the bounds of the survey, except so much thereof as is in the possession of the defendants, John Threlkeld, Anne Threlkeld, and the heirs of Jeremiah Proctor, deceased; and whereas, the said Ambrose Walden, and the unknown heirs of John Walden, deceased, have failed to convey to the complainants the before described two tracts of land agreeably to said decree:

Now, this indenture witnesseth, that the said James Crawford, commissioner as aforesaid, for and on behalf of the said Ambrose Walden, and the unknown heirs of John Walden, deceased, for and in consideration of the premises, and in order to carry this decree into effect, hath granted, bargained, sold, released, and conveyed, and by these presents doth grant, bargain, sell, release, and convey, unto the said Thomas Bodley and Robert Pogue, (agreeably to their respective interests, that is, to Bodley two-thirds, and to Pogue one-third,) all those two tracts or parcels of land, situate on the waters of Johnson's fork, in the counties of Fleming and Mason, the one containing 1333⅓ acres, entered and surveyed in the name of Ambrose Walden; the other, situate as aforesaid, containing 1666⅔ acres, entered and surveyed as aforesaid, in the name of John Walden, subject however to the exceptions and reservations herein before mentioned; the said tract of 1333⅓ acres was patented to the said Ambrose Walden on the first day of November, 1786, and is bounded as follows, to wit: Beginning at a buckeye and hoop ash tree; thence south 68° east, 450 poles, to two red oaks and honey locust; thence south 22° west, 473¾ poles, to an ash, Spanish oak, mulberry, and buckeye trees, standing on the bank of a small branch; thence north 68° west, 450 poles, to a hickory, red oak, and white oak, the southeast corner of Johnson's pre-emption; thence with a line of the same north 22° east, 473¾ poles, to the first station. And the said tract of 1666⅔ acres was patented to John Walden, on the first day of November, 1786, and is bounded as follows, to wit: Beginning at the southwest corner of A. Walden's survey, at a hickory, red oak, and white oak; thence 68° east, 450 poles, to an ash, Spanish oak, buckeye, and mulberry, the southeast corner of said A. Walden, and with a line of the same north 22° east, 164 poles, to two sugar trees and two white oaks in said Walden's line; thence south 68° east, 284 poles, to a locust, white oak, and coffee trees; thence south 22° west, 464 poles, to two small Spanish oaks and cherry; thence north 68° west, 734 poles, to a hickory, in a *bend* of Johnson's fork; thence north 22° east, 300 poles, to the beginning, together with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the said two tracts or parcels of land and premises, subject to the exceptions and reservations aforesaid, unto the said Thomas Bodley and Robert Pogue, their heirs or assigns, forever, agreeably to their several interests; that is, two-thirds

to said Bodley, and one-third to said Pogue. And the said James Crawford, commissioner as aforesaid, doth hereby convey to the said Bodley and Bodley and Pogue as aforesaid, all the right, title, claim, and interest of the said Ambrose Walden, and the unknown heirs of John Walden, deceased, in and to the before described two tracts of land, subject to the exception and reservations aforesaid, as fully as he is authorized, as commissioner as aforesaid by the said decree and by law to do.

In testimony whereof the said James Crawford, commissioner as aforesaid, hath hereunto set his hand and seal the day and date first above written.

JAMES CRAWFORD. [SEAL.]

FLEMING CIRCUIT, *sct:*

September term, 1825.

I, Leakin D. Stockton, clerk of the court for the circuit aforesaid, certify, that this deed, from James Crawford, commissioner therein named, to Thomas Bodley and Robert Pogue, was, at a court held for said circuit on the 6th day of September, in the year 1825, produced in open court, acknowledged by the said commissioners, and ordered to be recorded, which is done.

L. D. STOCKTON.

September 7th, 1825.

FLEMING COUNTY, *sct:*

I, Geo. M. Stockton, deputy for Joshua Stockton, clerk of the court for the county aforesaid, do certify, that this deed from James Crawford, commissioner as therein named, to Thomas Bodley and Robert Pogue, was this day produced before me, and acknowledged by said Crawford to be his act and deed, and the same is with the official certificate duly recorded in my said office.

G. M. STOCKTON, *D. C.*

Deed—Bodley to Duncan.

This indenture, made this 3d day of October, A. D. 1822, between Thomas Bodley and Catharine H., his wife, of the county of Fayette, and Commonwealth of Kentucky, of the one part, and David Duncan of the county of Mason, and commonwealth aforesaid, of the other part, witnesseth: That the said Thomas Bodley, for and in consideration of the sum of $360, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, and confirm, unto the said David Duncan, his heirs and assigns, all that tract or parcel of land situate and being in the county of Mason, on the waters of Johnson's fork of Licking, containing 178 acres, 27 poles, and bounded as follows, to wit: Beginning at a stone near the corner of said Duncan's orchard; thence S. 28½° E., 138 poles, to a stake, corner to John Peed; thence with Peed's line S. 52° W., 252 poles, to a white oak, *to a white oak*, and stone in William Deye's lane; thence N. 6° W., 159

poles, to a stone; thence N. 50° E., 168 poles, to the beginning; being part of 200 acres of land which was originally purchased by said Duncan of Arthur Fox, about the day of out of Jacob Johnson's settlement and pre-emption, and whereon the said David Duncan now lives; the balance of the 200 acres, that is 36 acres thereof, having been given up by said Duncan to said Thomas Bodley in a compromise about said land, and is this day conveyed by the said Bodley to the heirs and representatives of Benjamin Clarke, deceased, agreeably to an agreement between the parties, bearing date the 4th day of June, 1816, by which the said Bodley is bound to convey to said Duncan all his right, title, claim, and interest under Tibbs [&] Co's 20,000 acres, and the several other claims which he holds, and to warrant and defend against the claim of Ambrose Walden, together with all and singular the premises thereunto belonging, or in anywise appertaining.

To have and to hold the land hereby conveyed, with the appurtenances, unto the said David Duncan, his heirs and assigns forever. And the said Thomas Bodley, for himself, his heirs, executors and administrators, the aforesaid tract of land and premises, unto the said David Duncan, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever claiming by, through, or under him, and against the claim of Ambrose Walden, and those claiming under him, doth and will forever defend by these presents.

In testimony whereof the said Thomas Bodley and Catharine H., his wife, have hereunto set their hands and seals the day and date first above written.

THOMAS BODLEY, [SEAL.]
CATHARINE H. BODLEY. [SEAL.]

Acknowledged in presence of—

The words "two" and "stone" twice inserted by Thomas Bodley. October 3d, 1822.

FAYETTE COUNTY, *to wit:*

This indenture was this day produced to me, the clerk of the court for the county aforesaid, and acknowleged by Thomas Bodley and Catherine H. Bodley, his wife, parties thereto, to be their act and deed; she, the said Catherine, being by me privily examined, separately and apart from her said husband, as the law directs, freely and voluntarily relinquished her right of dower in and to the premises conveyed by this indenture, which is hereby certified to the clerk of Mason county court for record.

Attest: J. C. RODES, *Clerk.*

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, certify, that this deed of conveyance, from Thomas Bodley and Catherine H., his wife, to David Duncan, was this day produced in my office, under the certificate of the clerk of Fayette county court, and the same, together

with the certificate thereon endorsed, are duly recorded in my said office.

Given under my hand, this 22d day of January, 1823.

MARSHALL KEY.

Hughes' deed to Bodley.

"This indenture, made this 11th day of October, A. D. 1815, between James Hughes and Mary, his wife, of Franklin county, Kentucky, of the one part, and Thomas Bodley, of Lexington, Fayette county, Kentucky, of the *the* other part, witnesseth: That the said James Hughes, for and in consideration of about the sum of $27,000, received by him as set forth in an article of agreement between the parties bearing date the 17th day of July, 1815, and in order to carry said agreement into effect, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey, unto the said Thomas Bodley, his heirs or assigns, forever, all the right, title, claim, and interest of him, the said James Hughes, his heirs, &c., in and to the following tracts of land heretofore held in manner hereinafter mentioned, to wit: so much of one undivided moiety as has not been conveyed by him, by virtue of any sales made by either of them in and to the following tracts of land, to wit, 16,000 acres surveyed on part of an entry of 20,000 acres, made in the names of John Tebbs & Co., on the 31st of July, 1783, lying on the waters of Johnson's fork and the north fork of Licking, in Mason and Fleming counties, patented to said Bodley the day of , and one half thereof conveyed by him to said Hughes; also 3,000 acres entered and surveyed in the name of David Blanchard, adjoining the above mentioned acre tract, at the S. E. corner, patented to said Bodley and Hughes the 14th day of February, 1799; also one other tract of 10,000 acres, entered and surveyed in the name of Robert Clarke, near the Upper Blue Licks, patented to said Bodley and Hughes; also one other tract 6052 acres, in Mason county, adjoining Shannon's settlement and pre-emption, entered in the name of John Marshall, patented to Thomas Marshall, and with certain reservations contained in the deed conveyed by Louis Marshall to said Bodley and Hughes; all which tracts have been jointly held in partnership between said Bodley and Hughes; also one undivided third part of 10,000 acres of land entered in the names of John Tibbs and John Crutcher, patented to Willoughby Tibbs and Robert Rutherford, and by sundry conveyances transferred to the said Bodley, Hughes, and Robert Pogue; also his, said Hughes', interest in and to the purchase made by said Bodley, Hughes, and Pogue from John Taylor, Caroline county, Virginia, of 3,000 acres of land on Johnson's fork of Licking, which said last mentioned tracts have been jointly held in partnership between the said Bodley, Hughes, and Pogue; the said several tracts hereinbefore mentioned being particularly bounded and described in the several original surveys and patents which are hereby referred to. And the said James Hughes, for himself, his heirs, &c., by these presents, doth give up, relinquish, transfer, and convey to the said Thomas Bodley, his heirs, executors, administrators, or assigns, all right, title, claim, or benefit to be derived from any and all

of the contracts heretofore made by them, or any person for them, respecting the said lands, or any part thereof, together with the appurtenances thereunto belonging or appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said Thomas Bodley, his heirs or assigns, forever. And the said James Hughes, for himself, his heirs, &c., before described interest in said tracts of land against the claim or claims of all persons claiming by, through, or under him, but against no other claim whatever, unto the said Thomas Bodley, his heirs or assigns, doth and will warrant and defend by these presents.

But it is understood, and is the true intent and meaning of this indenture, that in case the whole or any part of said land should be lost, or taken by any other claim, the said Hughes, his heirs, &c., are not to be liable to refund any part of the consideration, or be subject to any costs or damages, as the said Hughes only sells his right, without any recourse or liability in any event whatever.

In testimony whereof, the said James Hughes and Mary, his wife, have hereunto set their hands and seals, the day and date first above written.

JAMES HUGHES, [L. S.]
MARY HUGHES. [L. S.]

Executed in presence of—

Memorandum.

It is further understood that, if any partnership lands sold by the said Hughes previous to the 17th day of July, 1815, is unconveyed, the said Hughes does not warrant against such claimant, but a title is to be made by the said Bodley. The word "dollars," first page, between the 5th and 6th lines, interlined before signing.

ALEX. H. RENNICK, *D. C.*

FRANKLIN COUNTY, *sct:*

I, Willis A. Lee, clerk of the county court for the county aforesaid, do certify, that this deed, from James Hughes and Mary Hughes to Thomas Bodley, was produced to me on the 11th day of October, 1815, and was acknowledged by the said James and Mary to be their act and deed, for the purposes therein mentioned; and she, the said Mary Hughes, being by me examined separate and apart from her husband, as the law directs, did freely and voluntarily relinquish her right of dower in and to the premises, without the threats or persuasions of her said husband, and was willing the same might be recorded as such. Whereupon the same is certified to the clerk of the county court for the county of Mason.

In testimony whereof I have hereunto set my hand, as clerk, the date above written.

WILLIS A. LEE, *Clerk.*

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, do certify,

that this deed of conveyance, from James Hughes and Mary, his wife, to Thomas Bodley, was this day produced in my office, with the acknowledgment before the clerk of the county court of Franklin county, and the same is duly recorded.

Given under my hand, this 15th day of November, 1815.

MARSHALL KEY.

FLEMING COUNTY, *Clerk's office, November 7th*, 1818.

I, James Crawford, deputy clerk of the court for said county, certify, that this deed, from James Hughes and wife to Thomas Bodley, was this day produced in my office; and, by virtue of the certificate of the clerk of Franklin county court, is duly recorded.

JAMES CRAWFORD.

R. Campbell's deed to Bodley et al.

This indenture, made this 6th day of August, A. D. 1804, between Robert Campbell and Rebecca, his wife, of Mason county, State of Kentucky, of the one part, and Thomas Bodley, James Hughes, and Robert Pogue, of the other part: Whereas the said Robert Campbell, and the parties of the second part, in the year 1798 became joint purchasers, from Peyton and Magill, of Winchester, and Robert Rutherford, of Berkley county, Virginia, of a survey of 400 acres of land on Johnson's fork of Licking, in Mason and Fleming counties, Kentucky, entered in the names of John Tibbs and Henry Crutcher, patented to Robert Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased; and the same was conveyed to the said Thomas Bodley, James Hughes, Robert Pogue, and Robert Campbell, by deed dated the day of , duly recorded in the clerk's office of the Washington district court.

And whereas the said Robert Campbell had a claim to a pre-emption of 1,000 acres of land, entered in the name of William Hays, assignee of David *Binsey*, and patented to the said Campbell, the greater part of which is included within the said 10,000 acres survey; and, by an article of agreement between the said parties, dated the 16th day of March, 1801, it is, among other things, agreed and stipulated, that the said Campbell shall release and convey to the said Bodley, Hughes, and Pogue, all the right, title, claim, and interest of him, the said Campbell, of, in, and to all the said 10,000 acres of land, except to so much thereof as is covered by, and included in, the patent boundaries of the said Campbell's pre-emption; and that the said Bodley, Hughes, and Pogue shall release and convey to the said Campbell all their right, title, claim, and interest, under their said claim of 10,000 acres, to all that part of said Campbell's pre-emption which is included within the said 10,000 acre survey; all which will appear by a reference to the said agreement, in which the contract between the parties is fully stated.

Now, this indenture witnesseth, that the said Robert Campbell and Rebecca, his wife, for and in consideration of the pre-emption above recited, and for the further consideration [of] five shillings current mo-

ney to them paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, and release, and convey, unto the said Thomas Bodley, James Hughes, and Robert Pogue, their heirs, or assigns, forever, all the right, title, claim, and interest of the said Robert Campbell, under the purchase and deed aforesaid, in and to the before described 10,000 acres of land, agreeably to the boundaries and description contained in the patent and deed aforesaid, except as to so much thereof as covers, and is included within, the patent boundaries of the said Campbell's pre emption as aforesaid, together with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold the land and premises hereby conveyed unto the said Bodley, Hughes, and Pogue, their heirs or assigns forever, unto the said Robert Campbell and Rebecca, his wife, for themselves, their heirs, &c., the said land and premises unto the said Bodley, Hughes, and Pogue, their heirs or assigns, against the claim or claims of the said Robert Campbell and Rebecca, his wife, their heirs, and all persons claiming or to claim by, through, or under them, do and will warrant and defend by these presents. But it is agreed by the parties, and is the true intent and meaning of this indenture, that if the whole or any part of said land should be lost or taken by any better claim, the said Robert Campbell is not bound to refund, nor is he liable or subject to any costs or damages whatsoever, as he only transfers and relinquishes his right to the said land without any kind of recourse.

In testimony whereof the said Robert Campbell and Rebecca, his wife, have hereunto set their hands and seals, the day and date first above written.

ROBERT CAMPBELL, [SEAL.]
REBECCA CAMPBELL. [SEAL.]

Signed and acknowledged in presence of—

MASON COUNTY, *sct:*

I, Francis Taylor, clerk of the court of the circuit aforesaid, do certify, that this indenture, from Robert Campbell and Rebecca, his wife, to Thomas Bodley, James Hughes, and Robert Pogue, was this day produced before me, acknowledged by the said Robert Campbell, a party thereto, and a copy thereof is duly recorded in my office.

Given under my hand the 6th day of August, 1804.

FR. TAYLOR.

This indenture, made this 15th day of February, A. D. 1799, between Robert Rutherford, of Berkley county, John Peyton and Charles Magill, of Frederic county, in the State of Virginia, of the one part, and Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, of the State of Kentucky, of the other part, witnesseth: That the said Robert Rutherford, Jno. Peyton, and *Robert* Magill, for and in consideration of 1050 pounds current money of Kentucky, *of Kentucky*, to

them paid, the receipt whereof *the* do hereby acknowledge, do, by these presents, grant, bargain, sell, alien, and confirm, unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs or assigns forever, all that tract or parcel of land lying and being in the counties of Mason and Fleming, in the State of Kentucky, on the waters of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at a stake where there formerly stood a large black ash and small buckeye trees, marked I. T., on the road leading from the Lower Blue Licks to the mouth of Limestone, about 8 miles N. E. by E. from the said Licks; running thence due east 600 poles, to a small creek, continuing the same course to another small creek, continuing the same course, in all 1600 poles, to a buckeye, honey locust, and black walnut; thence due south, at 400 poles, crossed a creek, continuing the same course in all 1000 poles, to a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking at 800 poles, continuing the same course at 60 poles, crossed the said fork again, continuing the same course, in all 1600 poles, to two red oaks and a honey locust in a sink hole; thence due N., at 480 poles crossed the main branch of the east fork of Licking, continued the same course, at 60 poles crossed the said fork, crossed the said fork the third time at 60 poles, continued the same course, in all 1000 poles, to the beginning; containing 10,000 acres by survey made in the names of Henry Crutcher and Willoughby Tibbs, heir at law to John Tibbs, deceased, on the 4th day of March, 1784, and patented to Robert Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law to John Tibbs, deceased; one half of the said tract was conveyed by the said Willoughby Tibbs, to John Peyton, by deed recorded in the clerk's office of the Washington district court, and one half of the said moiety transferred by the said Peyton to Charles Magill, by agreement; together with all and singular the improvements and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the land hereby conveyed, with all and singular the premises, unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs or assigns, forever; and the said Robert Rutherford, John Peyton, and Charles Magill, for themselves, their heirs, executors, or administrators, the aforesaid tract of land, with the appurtenances, against the claim or claims of them or either of them, and their heirs, and against all claims of dower or other incumbrance which may arise under them or their heirs unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs or assigns, do and will warrant and defend by these presents; but it is understood and expressly agreed between the parties, that in case the whole or any part of the said land should be lost or taken by elder or better claims, the said Rutherford, Peyton, and Magill are not to refund or be accountable for any part of the purchase money, as they only sell the right of themselves and their heirs without any recourse.

In witness whereof the said Rutherford, John Peyton, and Charles Magill, by Buckner Thruston, their attorney in fact, duly authorized

by power of attorney bearing date the 5th of October, 1798, and recorded in the clerk's office of the Lexington district court, have hereunto set their hands and affixed their seals the date first above written.

ROBERT RUTHERFORD, [SEAL.]
JOHN PEYTON, [SEAL.]
CHARLES MAGILL. [SEAL.]

Executed in presence of—
JAS. BROWN,
LEWIS MARSHALL,
JOHN ARTHUR,
MACGREGOR.

STATE OF KENTUCKY, *Washington district, set:*

I, John Chambers, deputy clerk of the Washington district court, do certify, that this indenture from Robert Rutherford, John Peyton, and Charles Macgill, by Buckner Thruston, their attorney in fact, to Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, was, on the 20th day of February, in the year 1799, produced before me, proven by the oath of Lewis Marshall, a subscribing witness thereto, and was, the 26th day of August, in the year 1799 aforesaid, proven by the oath of James Brown, another subscribing witness thereto, and was this day proven by the affirmation of McGregor, another subscribing witness thereto, and is truly recorded in the office of the said court.

Given under my hand this 13th day of September, 1800.

JOHN CHAMBERS.

This indenture, made the 23d day of May, A. D. 1795, between Willoughby Tibbs, of the town of Dumfries, in the county of Prince William, in the Commonwealth of Virginia, and Betsy, his wife, of the one part, and John Peyton, of Winchester, in the county of Frederic, and commonwealth aforesaid, of the other part, witnesseth: That, for and in consideration of the sum of 700 pounds, current money of Virginia, to the said Willoughby Tibbs in hand paid by the said John Peyton, at or before the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, and for other good causes and considerations him hereunto moving, they, the said Willoughby Tibbs and Betsy, his wife, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said John Peyton and his heirs, all his, the said Willoughby Tibbs', undivided moiety or half part of two certain tracts or parcels of land, situate on the waters of Licking, in the State of Kentucky, one of which tracts contains 3,000 acres, and the other 10,000 acres, as particularly described in two patents granted for the same by Beverley Randolph, esq., then Governor of Virginia, to Robert Rutherford, assignee of Henry Crutcher, and to the said Willoughby Tibbs, heir at law to John Tibbs, deceased, which patent bears date, respectively, the 26th day of August, 1790, reference being thereunto had may more fully appear; together with all tenements, hereditaments, and appurtenances to the said undivided moiety of the two

tracts of land above mentioned, belonging, or in any wise appertaining: To have and to hold the said undivided moiety of the two tracts or parcels of land above mentioned, and thereby intended to be bargained and sold, free and clear of all incumbrances whatsoever, except the taxes now due thereupon, unto the said John Peyton, his heirs and assigns, forever, to the only proper use and behoof of him, the said John Peyton, his heirs and assigns, forever. And the said Willoughby Tibbs, for himself and his heirs, the land hereby intended to be bargained and sold unto the said John Peyton, his heirs and assigns, against them, the said Willoughby Tibbs and Betsy, his wife, and all and every other person or persons claiming by, from, or under him or them, shall warrant and forever defend.

In witness whereof the said Willoughby Tibbs and Betsy, his wife, have hereunto set their hands and seals the day and year *and year* first before written.

WY. TIBBS, [SEAL.]
BETSY TIBBS. [SEAL.]

Sealed and delivered in presence of—

PRINCE WILLIAM COUNTY, *sct:*

Personally appeared *William* Tibbs, the person named in the foregoing indenture as the grantor thereof, before us, two of the justices of the peace in and for the county aforesaid, and signed, sealed, and acknowledged the same indenture to be his act [and] deed for the purposes therein mentioned.

Given under our hands this 23d day of May, 1795.

ALEXANDER SITHGOW,
WM. BARNES.

COMMONWEALTH OF VIRGINIA,
Prince William county, sct:

I, John Williams, clerk of the county aforesaid, do hereby certify, [SEAL.] that Alexander Sithgow and Wm. Barnes, gentlemen who granted the above certificate, are justices of the peace in and for the county aforesaid, and that due faith and credit ought to be given to the said certificate as well in courts of justice as thereout.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said county, this 23d day of May, 1795, and in the 19th year of the commonwealth.

JOHN WILLIAMS.

STATE OF KENTUCKY,
Washington district, sct:

I, Francis Taylor, clerk of the Washington district court, (being authorized by law to receive and admit to record in my office deeds and other writings,) do certify, that this indenture, from Wy. Tibbs and Betsy, his wife, to John Peyton, was, on the 12th day of August, 1796, produced before me, and is, together with the certificates thereunto annexed, duly recorded in my office.

FRANCIS TAYLOR, *C. W. D. C.*
(A copy.) Attest: MARSHALL KEY, *C. M. C. C.*

Rose's deed to Rose.

This indenture, made this 2d day of July, A. D. 1827, between Jonathan Rose, of the county of Fleming and Commonwealth of Kentucky, of the one part, and Jonathan H. Rose, of the county of Fleming and commonwealth aforesaid, of the other part, witnesseth: That the said Jonathan Rose, for and in consideration of the sum of $700, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents do grant, bargain, sell, and confirm, unto the said Jonathan H. Rose, his heirs and assigns, all that tract or parcel of land situate and being in the county of Fleming, on the waters of the Flat fork of Johnson, containing 130¼ acres, and bounded as follows, to wit: Beginning at a white ash and buckeye, standing on the north side of a branch, S. W. corner of the land of F'yple's, K's; thence N. 67½° W., 158 poles, to a buckeye, two sugar trees, and black oak; thence N. 21° E., 44 poles, to a black ash and hickory, on the bank of the creek; thence N. 57° E., 31 $\frac{8}{10}$ poles, to a stone on the S. bank of the Flat fork; thence N. 38° E., 85 $\frac{2}{10}$ poles, to a hickory, (both the last named corners being corners of Pogue's mill tract; thence S. 62½° E., 110 poles, to two blue ashes and a sugar tree; thence S. 21° W., 158 poles, to the beginning, being the same land conveyed by Bodley and Pogue to said Jonathan Rose, together with all and singular the personal property in the possession of, and now owned by, said Jonathan Rose, together with all and singular the premises thereunto belonging, or in anywise appertaining. To have and to hold the land hereby conveyed, and the appurtenances, unto the said Jonathan H. Rose, his heirs and assigns, forever, and the said Jonathan Rose, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said Jonathan H. Rose, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, claiming through or under him, but against no others whatever, does and will forever defend by these presents.

In witness whereof the said Jonathan Rose has hereunto set his hand and seal, the day and date first above written.

JONATHAN ROSE, [SEAL.]
ELIZABETH ✕ ROSE [SEAL.]

Acknowledged in presence of—

_____ _____.

July 2d, 1837.

FLEMING COUNTY, *sct:*

As deputy clerk of the Fleming county court, I certify that this deed from Jonathan Rose to Jonathan H. Rose, was this day produced before me, and acknowledged by the said Jonathan Rose to be his deed, and the same is duly recorded.

JAMES CRAWFORD, *D. C.*

October 18, 1828.

FLEMING COUNTY, *sct:*

As deputy clerk of the Fleming county court, I certify that this deed from Jonathan Rose and Elizabeth, his wife, to Jonathan H. Rose, was this day produced before me, and the said Elizabeth being examined by me privily and apart from her said husband, declared that she did freely and willingly deliver said *said* writing, and wished not to retract it, and acknowledged said writing again shown and explained to her to be her deed, and consented that the same may be recorded, which is done.

G. M. STOCKTON.

Thomas Bodley, et al., deed to D. Clarke, et al.

This indenture, made the 25th of May, A. D. 1826, between Thos. Bodley and Catharine H., his wife, of the county of Fayette and Commonwealth of Kentucky, on the one part, and Daniel Clarke, Thomas Clarke, Susan Sumrall, wife of Jos. K. Sumrall, Susan E., Mary, Thomas C., Charles, Daniel, and Walter Lacy, children of Walter Lacy and Elizabeth, his wife, late Elizabeth Clark, deceased, Mary Hester McMillan, a child of Andrew F. McMillan and Mary, his wife, late Mary Clarke, deceased, and Virginia Clarke, heirs of Benjamin Clarke, deceased, of the county of Mason and commonwealth aforesaid, of the other part, witnesseth: That the said Thomas Bodley, for and in consideration of the sum of $1,465, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said heirs of Benjamin Clarke, deceased, their heirs or assigns, all that tract or parcel of land, situate and being in the county of Mason, on the waters of Johnson's fork of Licking, containing 650 acres in two different tracts, and bounded as follows, to wit:

The first beginning at a blue ash, corner to Richard Tenant, on Johnson's old line; thence with said line S. 40° E., 123 poles, to a white oak and hackberry, corner to 50 acres sold to Gen'l Robert Pogue out of Johnson's pre-emption; thence with his line S. 50° W., 80 poles, to a stake; thence S. 40° E., 100 poles, to a white oak and hickory in Johnson's line, and corner to Pogue; thence S. 50° W., 182 poles, to a stake corner to Peed; thence N. 40° W., 242 poles, to a stone corner to David Duncan; thence N. 50° E., 242 poles, to the beginning. The second tract beginning at the above mentioned stone corner to Duncan; thence with his line S. 50° W., 258 poles, to a stake in Johnson's line; thence with the same S. 40° W., 242 poles, to a stake where one of Johnson's original corners stood; thence N. 50° E., 258 poles, to a large poplar and hickory, one of Langley's corners; thence S. 40° E., 242 poles, to the beginning. The two tracts containing 650 acres, be it more or less, part of Jacob Johnson's settlement and pre-emption. Also another tract of 64 acres, and bounded as follows, to wit: Beginning at a buckeye, corner to Nathaniel Hixon; thence with his line S. 40° E., 109½ poles, to a blue ash, corner to

Richard Tennant; thence with his line N. 17½° E., 52 poles, to a box elder, another of Tennant's corners; thence S. 45° E., 17½ poles, to a stone, another of Tennant's corners; thence S. 83° E., 60 poles, to a large hackberry in Allen's line; thence with said line N. 40° W., 154 poles, to a buckeye, corner to Thomas Wilson; thence S. 51° W., 84 poles, to the beginning, which said Bodley claimed by virtue of Tibbs & Co's 20,000 acre entry, and John Marshall's 6,050 acre entry, and which he sold to said Clarke by agreement, dated 1st August, 1811, together with all and singular the premises thereunto belonging or in any wise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the heirs of Benjamin Clarke, deceased, their heirs and assigns, forever.

And the said Thomas Bodley, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises unto the said heirs of Benjamin Clarke, deceased, their heirs or assigns, against the claim or claims of all and every person and persons whatsoever, agreeably to an article of agreement between the parties, doth and will forever defend by these presents.

In witness whereof the said Thomas Bodley and Catherine H., his wife, have hereunto set their hands and seals the day and date first above written.

THOMAS BODLEY, [SEAL.]
CATHERINE H. BODLEY. [SEAL.]

Acknowledged in presence of—

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, certify, that this deed of conveyance from Thomas Bodley and Catherine, his wife, to the heirs of Benjamin Clarke, deceased, was this day produced in my office, and acknowledged before me by the said Thomas Bodley to be his act and deed, and the said deed is hereby recorded in my said office.

Given under my hand this 25th day of May, 1826.

MARSHALL KEY.

Reed's heirs and representatives to Benjamin Clarke.

This indenture, made this 1st day of August, A. D. 1815, between John Reed, Anthony Reed, James Reed, and Sally Ann Foster Ewing, daughter and heir of Nancy Ewing, deceased, late Nancy Reed, by William C. Ewing, her guardian, duly appointed by law, heirs and legal representatives of John Reed, deceased, late of the county of Nelson and Commonwealth of Kentucky, on the one part, and Benjamin Clarke, of the commonwealth aforesaid, of the other part, witnesseth: That the said heirs and representatives of John Reed, dec'd, for and in consideration of the sum of $2,000, current money of Kentucky, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and confirm, unto the said Benjamin Clarke, his heirs and assigns,

all that tract or parcel of land situate and being in the county of Mason, and on the waters of Johnson's fork of Licking, containing 700 acres, and bounded as follows, to wit: Being one equal half or undivided moiety of a settlement and pre-emption of 1,400 acres, lying on the Limestone road, 9 miles from the Lower Blue Licks, entered in the name of Peter Johnson, heir at law of Jacob Johnson, deceased, and patented to John Reed and Arthur Fox, agreeable to the description and boundaries contained in said patents, as by reference thereto will fully appear, together with all and singular the premises thereunto belonging, or in any wise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said Benjamin Clarke, his heirs and assigns, forever.

And the said heirs and representatives of John Reed, deceased, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises unto the said Benjamin Clarke, his heirs or assigns, against the claim or claims of all and every person or persons whatsoever, do and will forever defend by these presents.

In witness whereof the said heirs and representatives of John Read, deceased, have hereunto set their hands and seals, the day and date first above written.

JOHN READ, [SEAL.]
By Anth'y F. Read, his att'y in fact.
ANTHONY F. READ, [SEAL.]
JAMES G. READ, [SEAL.]
By Anth'y F. Read, his att'y in fact.
SALLY ANN FOSTER EWING, [SEAL.]
By Wm. Y. C. Ewing, her guardian.

Acknowledged in presence of—
WALTER LACY,
DANIEL CLARK,
WM. ROUTT,
THOS. CLARKE.

STATE OF KENTUCKY, *Mason county, sct:*

I, Marshall Key, clerk of the county court of said county, do certify, that this deed of conveyance from John Read, Anthony Read, James G. Read, and Sally Ann Foster Ewing, to Benjamin Clarke, was produced in my office, and proved according to law by the oath of Daniel Clarke and Thos. Clarke, witnesses thereto; and the same is duly recorded.

Given under my hand, this 14th day of August, 1815.

MARSHALL KEY.

Bodley and ux. to D. Clarke—Deed.

This indenture, made this 3d day of October, A. D. 1822, between Thomas Bodley and Catherine H., his wife, of the county of Fayette, and Commonwealth of Kentucky, of the one part, and Daniel Clark, Thomas Clark, Walter Lacy, Judith Lacy, Susan Lacey, Mary Lacy,

Thomas Lacy, Edwin Lacey, Walter Lacy, jr., and Daniel Lacy, children of Elizabeth Lacy, deceased, late Elizabeth Clark, Andrew McMullin, and Mary Hester McMullin, daughter of Mary McMullin, deceased, formerly Mary Clark, Joseph K. Sumrall, and Susan, his wife, late Susan Clarke, and Virginia Clarke, heirs, legal representatives of Benjamin Clark, of the county of Mason, and commonwealth aforesaid of the other part, witnesseth: That the said Thomas Bodley, for and in consideration of the sum of $1,605, current money of Kentucky, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said heirs and representatives of Benjamin Clarke, their heirs and assigns, all that tract or parcel of land situate and being in the county of Mason, on the waters of Johnson's fork of Licking, containing 107 acres, and bounded as follows, to wit: Beginning at two buckeyes in Jacob Johnson's settlement and pre-emption line, a corner of Nathaniel Hixon's; thence S. 40° W., 71 poles, with Clark's line, to a honey locust stump, hickory, and white oak; thence with another line of Clark's, N. 41° W., 241 poles, to three hickories; thence N. 40° E., 72 poles, with another of Clark's lines, to two hickories and a sugar tree; thence with a line of Nathaniel Hixon's to the beginning, being the same land given up by the heirs of Arthur Fox, deceased, in a compromise with said Bodley, in the year 1818, known by the name of Longley's place, is a part of Jacob Johnson's settlement and pre-emption, and is also part of John Tibbs & Co's 20,000 acre entry, patented to said Bodley; the said 107 acres having been sold by the said Bodley to said Clark, on the day of , 1816, together with all and singular the premises thereunto belonging, or in any wise appertaining; to have and to hold the land hereby conveyed, with the appurtenances, unto the said heirs and representatives of Benjamin Clarke, deceased, their heirs and assigns, forever. And the said Thomas Bodley, for himself, his heirs, executors, and administrators, the aforesaid tract of land and premises unto the said heirs and representatives of Benjamin Clarke, deceased, their heirs or assigns, against the claim or claims of all and every person or persons whatsoever, doth and will forever defend by these presents.

In witness whereof the said Thomas Bodley and Catherine H., his wife, have hereunto set their hands and seals, the day and date first above written.

THOMAS BODLEY, [SEAL.]
CATHERINE H. BODLEY. [SEAL.]

Acknowledged in presence of—

FAYETTE COUNTY, *to wit:* *Oct.* 3*d*, 1822.

This indenture was this day produced to me, the clerk of the court for the county aforesaid, and acknowledged by Thomas Bodley and Catherine H. Bodley, his wife, parties thereto, to be their act and deed; she, the said Catherine, being by me privily examined, separate and

apart from her said husband, as the law directs, freely and voluntarily relinquished her right of dower in and to the premises conveyed by this indenture, which is hereby certified to the clerk of Mason county court for record.

Attest: J. C. RODES, *Clk.*

Deposition of Gibson Hamrick.

The deposition of Gibson Hambrick, of lawful age and sound mind, being *upward* of 64 years of age, given at the house of *Samul* Baldwin, in the county of Mason, to be read in evidence in a suit in chancery now depending and undetermined in the Federal court, for the district of Kentucky, at Frankfort, where Ambrose Walden is complainant, and Thomas Bodley and others are defendants, this 22d day of March, 1832, being first sworn, deposes and says, that he moved on the land of Ambrose Walden in the year 1805, on the land claimed by Walden, and near where there stood a cabin; and that in conversation one day with Jonathan Rose, then living on Ambrose Walden's land, Rose then observed that if Walden should recover the land then sued for by Walden, that there stood the cabins of Walden on the north side of the creek, that is the Flat fork of Johnson's, near to a mill first built by Shockey, and since *owned* by me, and when I first *settled* on the land it was generally known as Ambrose Walden's improvements.

Question by complainant. Was this improvement of Walden generally *none* by early settlers in the neighborhood?

Answer. They were; and I further state that I heard Walden point out the same place that Jonathan Rose had pointed out for his improvements. And this deponent further says not.

G. HAMBRICK.

MASON COUNTY, *sct:*

The foregoing deposition of Gibson Hambrick was this day taken, subscribed, and sworn to by the said Gibson Hambrick before the undersigned, a justice of the peace for said county, at the time and place, and for the purposes stated in the caption thereof.

Given under my hand this 29th day of March, 1832.

PERRY JEFFERSON, *J. P.*

Deposition of Nathaniel Hickson.

March 29th, 1832. This deposition of Nathaniel Hickson, of lawful age and sound mind, taken at the house of Walter Lacy, in Mason county, to be read in evidence in a suit in chancery in the federal court, sitting in Frankfort, for the 7th district of Kentucky, United States court, where Ambrose Walden is complainant, and Thomas *Bobb* and others are defendants, being first sworn, deposeth and saith: That having been called on by Edward Blackburn, agent for Ambrose Walden last fall, to show and depose to the spot where a cabin stood, called Walden's cabin, inside of Walden's survey, I then *shows* the place where the said cabin stood on the N. or N. E. side of the Flat fork of Johnson's fork of Licking, as may be seen by reference to my former deposition and the plat as laid down by the county surveyor.

Question by complainant. Did you, or did you not, know of another cabin on the land of Walden near the cabin referred to in your other deposition, on the same side of said creek?

Answer. I did not know of another cabin of my own knowledge, but from the information of others there was another cabin called Walden's cabin, between 2 and 400 yards below where the one stood spoken of in my former deposition, on the same side of the creek, and inside of Walden's survey.

Question by same. Were not those cabins called and known as Walden's cabins at the time you first became acquainted with this part of the country?

Answer. I knew the one and heard the other called Walden's cabins as early as 1795, and have resided in the neighborhood ever since, and have never heard them called any body else's cabins; and, further, I was informed by Simon Kenton that he, Kenton, built said cabins for Walden. And further this deponent saith not.

NATHANIEL HIXION.

KENTUCKY, *Mason county, sct:*

The above deposition of Nathaniel Hixon was this day taken, subscribed, and sworn to before the undersigned, one of the justices of the peace for said county, at the time and place, and for the purpose as set forth in the caption.

Given under my hand this 29th of March, 1832.

JAMES ARTUS.

Deposition of Nathaniel Hixson.

The deposition of Nathaniel Hixson, taken to be read in evidence in the suit in chancery depending in the circuit court of the United States, for the district of Kentucky, wherein Thomas Bodley and others are complainants, and Ambrose Walden and others are defendants, on the 11th day of November, 1831, at the house of Major Walter Lacy, in the county of Mason, and State of Kentucky, who being duly charged and sworn to depose the whole truth, deposeth and saith:

Question by defendants. Was not the cabin that stood at the place this day shown by you to the surveyor of Mason county, and which he has represented on the plat and report of survey in this suit by the letter A, known and commonly called, when spoken of, Ambrose Walden's cabin, and within his survey of 1333 acres, represented on the plat by figures 5, 6, 7, 8?

Answer by deponent. There was a cabin which stood at the place shown by this deponent to the surveyor of Mason county this day, which when spoken of was commonly called Walden's cabin, and was within his survey of 1333 acres; the place of the cabin is represented on the plat shewn this deponent by the surveyor, and to be returned in this suit, by the letter A.

Question 2d, by same. At what period did you first become acquainted with the cabin above spoken of?

Answer by deponent. I am not certain whether it was in the year 1794 or 1795, but in one of those years.

Question 3d, by same. From the appearance of the cabin when you became first acquainted with it, how long do you suppose it had been built previous to that period?

Answer by deponent. I would suppose that from its appearance it was built from 10 to 15 years before I saw it.

Question 4th, by same. Was there not another cabin in said Walden's survey of 1333 acres, claimed by or called Walden's cabin.

Answer by deponent. I heard persons speak of another cabin as Walden's cabin inside of his survey, in and about the time of my first acquaintance with the one first mentioned.

Question 5th, by same. Are you acquainted with Jacob Johnson's survey of 400 acres, and of his survey of 1000 acres called his settlement survey? If so, state when and how far they are from the Lower Blue Licks.

Answer by deponent. I am acquainted with both the 400 and 1000 acre surveys in the name of Jacob Johnson, adjoining each other; I first knew those surveys, or rather claims, in the fall of the year 1788; they were not surveyed until the spring 1789, and they were well known by persons in their neighborhood as Johnson's claims; their distance from the Lower Blue Licks was 9 miles, a fact which this deponent the better knows from having once, at the request of the complainant, Bodley, measured the distance, and their locality is on what was then called the Upper Buffalo tract, leading from said Licks to Limestone.

Question 6th, by same. How long have you resided in the neighborhood of these surveys?

Answer by deponent. I have lived on the settlement survey in the name of Jacob Johnson, ever since the month of January, 1792; the 400 acre survey lies in the centre of the settlement survey, and further this deponent says nothing.

NATHANIEL HIXON.

KENTUCKY, *Mason county, sct.*

The above deposition of Nathaniel Hixon was taken, subscribed, and sworn to, before the undersigned, one of the justices of the peace in and for said county, at the time and place, and for the purpose as set forth in the caption thereof.

Given under my hand this 11th November, 1831.

JAMES ARTHER.

Deposition of Nathaniel Hixson.

The deposition of Nathaniel Hixson, taken at the house of Major Lacy, in the county of Mason, on the 9th day of October, 1832, in pursuance to notice in the suits in chancery, depending in the circuit court of the United States for the district of Kentucky, wherein Thos. Bodley and others are complainants, and Ambrose Walden is defendant, who being duly charged, examined, cautioned, and sworn, to de-

pose the whole truth, doth depose and say, to the following interrogatory by the defendant:

State if you have or not on to-day shown to Surveyor Athelston Owens the 9 miles point on the Buffalo road, from the Blue Lick to the mouth of Limestone. If you know said road, if you have or not, on to-day or not, shown to said surveyor two places where once stood two improvements called and known as Walden's improvements, have you or not been long acquainted with this part of the country, and the objects aforesaid? State all you know on these subjects.

The deponent answereth: That he settled where he now lives on the Upper Buffalo road, from the Blue Licks to the mouth of Limestone, in the year 1792, on the claim of Peter Johnson, and has been well acquainted in the neighborhood ever since; and about the year 1796 he saw a cabin standing on a point on the northwest side of the Flat fork of Johnson's fork, which he was informed was Walden's cabin, and about the same [time] was informed that a cabin had stood on a point just below said cabin, also called Walden's cabin; the position of this cabin or place where I was informed that it stood, I, on to-day, showed to Surveyor Owens, as well as of the cabin I saw standing. This deponent can't state from whom he first got the information, that said cabins were designed for Walden, but thinks the first satisfactory information he got on the subject was from Gen. Simon Kenton; that from his earliest acquaintance the Buffalo road, on which he showed the 9 mile point, was called the upper road or Buffalo trace, from the Blue Licks to the mouth of Limestone. The trace that lead near Ross' old station was called the middle trace; that 10 or 12 years since he was called upon to show the Upper Buffalo road or trace, leading from the Blue Lick to Limestone, to Col. Duvall Payne, a surveyor, and others, and was present when the same was run and measured by said surveyor, and the nine miles run out at the point where this deponent showed the surveyor on to-day. This deponent was showed a place that was formerly called the nine mile point by Arthur Fox, deceased, who said that he had measured it from the Blue Licks to that place.

By same. Did you or not ever hear said cabins called by the neighbors, or others, by any other name or as any other person's but Walden's.

Answereth, that he never did; that the cabin he saw appeared ancient, and was considerably decayed; it was about ten or twelve feet square, and made of logs; he supposed that logs of the kind would decay as much as they appeared decayed, in fifteen years.

Question by Major Lacy for complainants. State if the information you got from Gen. Kenton was when on the ground where the cabin stood.

Answer. We were not on the ground.

By same. Was there not a number of other cabins along the Flat fork?

Answer. If there were, I know nothing of them; there might be, but if there was, I have never heard of them; at least I have no recollection of ever hearing of them.

Question by defendant's counsel. How long do you suppose the stream called the Flat fork is from head to mouth?

Answer. About two miles and a half on a straight line; and further deponent saith not.

NATHANIEL HIXSON.

The deposition of Joseph Duncan, taken in same suit and at the same time and place, to be read in evidence in same suits:

State, Mr. Duncan, if you can, any knowledge you possess of the cabins spoken of by Mr. Hixson, and whatever you know relative to their existence, and whatever else you know material in this case.

Answereth, that he hath no knowledge of them whatever, and does not know that he can detail any thing material in the controversy; and further the deponent saith not.

JOSEPH DUNCAN.

Deposition of Simon Kenton.

The deposition of General Simon Kenton, taken at the same time and place in the same suits, who deposeth and saith, that in the year 1776, about the month of May or June, that he, assisted by Jacob Drennen and Samuel Arrowsmith, built the two cabins called for in Ambrose Walden's entry; that after he made Ambrose Walden's said entry of 1333 acres, and called for said cabins in the location as built by Simon Kenton, that at the time he made said location, he knew of no other improvement on the creek on which the improvements stood; that they stood near what is now called the Flat fork of Johnson, and on the northwest side of the Flat fork; that said cabins were about ten or twelve feet square, and built of logs, about as high as his head; that they put ribs on them, but whether they covered them or not with bark he does not recollect. That in the year 1784 he showed said cabins to two deputies of Col. Marshall, to wit, Simon Morgan and James Wright, expecting to get them to survey, but failed; that in the year 1785 he employed William Henry, another deputy, and showed him the cabins and piloted the surveys. This deponent has this day seen the Flat fork and knows that *it* was the creek on which he built the cabins; and when he was making the survey it was his intention, and that of the surveyor, to include the cabins nearly in the centre, between east and west lines; that the ground being cleared, and the country so altered, he is not able to state the precise situations of the improvements; that he was with the surveyor to-day when Mr. Hixon showed the places as those where the improvements stood; that he feels satisfied as to one of the places, but not as to the other, as he thought that they were a half mile apart or more, and one of them higher up the creek than the one shown by Hixon, but can't say as to the distance they were apart, but he is confident that they were both in the bounds of the survey, and on the same side of a creek. Said deponent saith, that from the year 1775 he was well acquainted with Limestone creek and its mouth, and with the Blue Licks, and the three principal Buf-

falo roads that lead from the Blue Licks or Lick northwardly; that after passing the Battle ground, the main Buffalo road branched into three principal forks; the one passed or crossed Clarke's run, near where it emptied into the north fork, and from thence went over the ridge to the head of Lee's creek to the Ohio; this was called the Lower Buffalo road or trace; and the other road passed near the former residence of General Desha, and Ross's station, crossing the north fork to Durrett lick, and then united with the upper road on Warren's branch, where they became one road, and lead to the mouth of Limestone; this was called the Middle Buffalo road or trace; the other fork or road was called the Upper road, and crossed Johnson's fork above Clarke's mill to Mayslick; crossing the north fork, then through where Washington stands to Warren's branch, where it united with the middle trace or road, and lead to Limestone creek at its mouth; that these roads were generally and notoriously known to travellers and others acquainted in the part of the country from the year 1775, by the names of the Upper, Lower, and Middle Buffalo roads, leading from the Blue Lick or Licks; that the Blue Licks and Limestone were likewise well known in 1775; that there are two salt springs at what is called the Lower Licks; that on the north side of Licking river, (from whence these roads lead,) there *was* is but one salt spring or lick, the other being on the south side of Licking river. These springs are between 3 and 400 *hundred* apart; that he is well acquainted with what is called the Upper Blue Lick, and has been so from the year 1775; that said salt spring or lick lies on the south side of Licking river; that there is no spring or lick near that on the north side of Licking river, and he feels confident that [there] was no Buffalo [road] that lead from the Upper Blue [Lick] to Limestone; that he knew of some traces leading out to the feeding grounds, and one lead to Mill creek. That explorers marked a path from Mill creek thence toward the waters of Limestone creek, but there was no Buffalo road from Limestone to Mill creek ; that he never heard any road leading in any direction from the Upper Blue Lick, called the Upper Buffalo road, and never heard [of] any road, except the one before described, called the Upper Buffalo road, leading from the Blue Licks to Limestone; that he never knew or heard of but one Buffalo road leading from the Upper Blue Lick to the Ohio, that passed by Stogden's spring, and over Cabin creek, and down that to the Ohio. That the place he showed the surveyor to-day was, at the time the deponent made Walden's entry, called nine miles from the Blue Lick. The deponent further states, that at the time he made the entry of Ambrose Walden of 1333 acres, he, the deponent, was called and well known by the name of Simon Butler, and was so called and known by that name until some time thereafter. The deponent further saith, that from the time he first knew the Upper and Lower Blue Licks, that each of them was sometimes called in the singular and plural, that is, the Upper Blue Lick was sometimes called the Upper Blue Licks, and the Lower Blue Licks was sometimes called the Lower Blue Lick.

Question by defendant. Suppose a person were at Limestone or Ken-

ton's station, or *Hicksonston's* station, were to say that he had been at the Blue Lick or Blue Licks, at which lick *at which lick* would he be understood to mean he had been at?

Answer. I would say at once at the Lower Blue Licks; the reason why he would be so understood is the greater notoriety of the Lower Blue Licks, they being on the leading way from the mouth of Limestone into the stations settled in Kentucky; the Upper Blue Licks was out of the range of settlements at an early day, and of course was not so much spoken of.

By Major Lacey for the complainants. Were there not other improvements in the neighborhood of Ambrose Walden's improvements besides his, Walden's?

Answer. There were many in different places and directions from Walden, but I know of none within Walden's bounds.

By defendant's counsel. Have you any recollection of ever seeing on the stream now called the Flat fork any improvements except Walden's?

Answer. I have not; and further deponent saith not.

SIMON KENTON.

STATE OF KENTUCKY, *Mason county, sct:*

I certify that, on the day and at the place stated in the caption of the deposition of Nath'l Hixson, the deponent appeared. The deponents, the said Nath'l Hixson, Joseph Duncan, and Simon Kenton, and being by me severally charged and sworn, as stated in said caption, did give and depose to, and subscribe, severally, and each for himself, in my presence, and before me, these depositions, as the same appear, and succeed each other. All which is certified this 9th day of October, 1832, under cover and seal.

LEVI VAUCAMP.

Deposition of Simon Kenton.

The deposition of Gen'l Simon Kenton, taken at the house of Job Garwood, in Zanes*field*, in the county of Logan, in the State of Ohio, to be read in evidence in the suits in chancery depending in the circuit courts of the United States for the district of Kentucky, wherein Thomas Bodley et al. are complainants, and Ambrose Walden et al. are defendants, on the 28th day of October, 1831, who, being duly charged and sworn to depose the whole truth, deposeth and saith, that, in the summer of 1776, with Jacob Drennon, Samuel Arrowsmith, and others, men who were exploring the country for making improvements, built two cabins a small distance east of the Buffalo road, leading from the Lower Blue Licks, in Kentucky, to Limestone, on the north side of Johnson's fork of Licking river, about 9 miles from said licks; that he afterwards, on the 22d day of May, 1780, entered, in the name of Ambrose Walden, upon a Treasury warrant, 1,333 acres of land, which included the said two cabins; that he, in November, 1785, proceeded with Wm. Henry, a surveyor, to survey the said entry, and made the survey according to said entry, which included the said two cabins then standing; that, some five or six years since, he was called on by E. M.

Blackburn, agent for said Walden, to show the corners of the said survey to the surveyor of Mason county, Kentucky; that he proceeded on with said surveyor and said Blackburn; that he showed them where the beginning corner stood, but it was cut down; that the surveyor commenced running from the said place, and run round the survey, agreeable to the calls, and, according to his best recollection, he found all of the corners except the beginning one, and that the survey agreed with the calls to a great degree of accuracy; that he frequently, from the time of surveying the said entry, in passing the road from the said Lower Blue Licks to his station, about 200 poles north of what is now the north end of Washington, in Mason county, Kentucky, observed the beginning corner of said survey by the relation it bore to a large sugar tree standing on the side of a road, and frequently, in passing along said road with company, pointed out said corner to them as said Walden's beginning corner; and further saith not

SIMON KENTON.

STATE OF OHIO, *Logan county, sct:*

The aforesaid deposition of Gen'l Simon Kenton was taken, subscribed, and sworn to, before me, one of the justices of the peace in and for the said county, and at the time and place aforesaid, which place is estimated to be 180 miles from Frankfort, State of Kentucky.

Given under my hand and seal at Zanes*field*, in the county of Logan, State of Ohio, on the 28th day of October, 1831.

ALEX'R LONG, *J. P.* [SEAL.]

Deposition of Levi Vaucamp.

The deposition of Levi Vaucamp, before James Artus, the undersigned, one of the justices of the peace in and for the Commonwealth of Kentucky, and county of Mason, being, by virtue of my commission, one of the judges of the county court, in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 25th day of October, in the year 1834, at the dwelling-house of James Artus, in the county aforesaid, to be read as evidence in a certain depending in the court of the United States, in and for the seventh circuit and Kentucky district, holden in Frankfort, wherein Thomas Bodley's heirs are complainants, and Ambrose Walden et al. are defendants in chancery, said deponent, being first duly affirmed and cautioned to depose the whole truth, doth depose and say: That he resides in the county of Mason; that he is aged 49 years; and further saith, in answer to the several interrogatories propounded to him by the complainants, that he was at the house of Major Walter Lacey at the time Simon Kenton's deposition was taken in this suit, in the year 1832; that his deposition was taken before him as a justice of the peace for Mason county.

In answer to the second this deponent saith, that Simon Kenton, in his deposition, represented the cabin originally made by him to have been made near the *the* Flat fork of Johnson's fork of Licking, on the N. W. side of said fork.

ton's station, or *Hicksonston's* station, were to say that he had been at the Blue Lick or Blue Licks, at which lick *at which lick* would he be understood to mean he had been at?

Answer. I would say at once at the Lower Blue Licks; the reason why he would be so understood is the greater notoriety of the Lower Blue Licks, they being on the leading way from the mouth of Limestone into the stations settled in Kentucky; the Upper Blue Licks was out of the range of settlements at an early day, and of course was not so much spoken of.

By Major Lacey for the complainants. Were there not other improvements in the neighborhood of Ambrose Walden's improvements besides his, Walden's?

Answer. There were many in different places and directions from Walden, but I know of none within Walden's bounds.

By defendant's counsel. Have you any recollection of ever seeing on the stream now called the Flat fork any improvements except Walden's?

Answer. I have not; and further deponent saith not.

SIMON KENTON.

STATE OF KENTUCKY, *Mason county, sct:*

I certify that, on the day and at the place stated in the caption of the deposition of Nath'l Hixson, the deponent appeared. The deponents, the said Nath'l Hixson, Joseph Duncan, and Simon Kenton, and being by me severally charged and sworn, as stated in said caption, did give and depose to, and subscribe, severally, and each for himself, in my presence, and before me, these depositions, as the same appear, and succeed each other. All which is certified this 9th day of October, 1832, under cover and seal.

LEVI VAUCAMP.

Deposition of Simon Kenton.

The deposition of Gen'l Simon Kenton, taken at the house of Job Garwood, in Zanes*field*, in the county of Logan, in the State of Ohio, to be read in evidence in the suits in chancery depending in the circuit courts of the United States for the district of Kentucky, wherein Thomas Bodley et al. are complainants, and Ambrose Walden et al. are defendants, on the 28th day of October, 1831, who, being duly charged and sworn to depose the whole truth, deposeth and saith, that, in the summer of 1776, with Jacob Drennon, Samuel Arrowsmith, and others, men who were exploring the country for making improvements, built two cabins a small distance east of the Buffalo road, leading from the Lower Blue Licks, in Kentucky, to Limestone, on the north side of Johnson's fork of Licking river, about 9 miles from said licks; that he afterwards, on the 22d day of May, 1780, entered, in the name of Ambrose Walden, upon a Treasury warrant, 1,333 acres of land, which included the said two cabins; that he, in November, 1785, proceeded with Wm. Henry, a surveyor, to survey the said entry, and made the survey according to said entry, which included the said two cabins then standing; that, some five or six years since, he was called on by E. M.

Blackburn, agent for said Walden, to show the corners of the said survey to the surveyor of Mason county, Kentucky; that he proceeded on with said surveyor and said Blackburn; that he showed them where the beginning corner stood, but it was cut down; that the surveyor commenced running from the said place, and run round the survey, agreeable to the calls, and, according to his best recollection, he found all of the corners except the beginning one, and that the survey agreed with the calls to a great degree of accuracy; that he frequently, from the time of surveying the said entry, in passing the road from the said Lower Blue Licks to his station, about 200 poles north of what is now the north end of Washington, in Mason county, Kentucky, observed the beginning corner of said survey by the relation it bore to a large sugar tree standing on the side of a road, and frequently, in passing along said road with company, pointed out said corner to them as said Walden's beginning corner; and further saith not

SIMON KENTON.

STATE OF OHIO, *Logan county, sct:*

The aforesaid deposition of Gen'l Simon Kenton was taken, subscribed, and sworn to, before me, one of the justices of the peace in and for the said county, and at the time and place aforesaid, which place is estimated to be 180 miles from Frankfort, State of Kentucky.

Given under my hand and seal at Zanes*field*, in the county of Logan, State of Ohio, on the 28th day of October, 1831.

ALEX'R LONG, *J. P.* [SEAL.]

Deposition of Levi Vaucamp.

The deposition of Levi Vaucamp, before James Artus, the undersigned, one of the justices of the peace in and for the Commonwealth of Kentucky, and county of Mason, being, by virtue of my commission, one of the judges of the county court, in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 25th day of October, in the year 1834, at the dwelling-house of James Artus, in the county aforesaid, to be read as evidence in a certain depending in the court of the United States, in and for the seventh circuit and Kentucky district, holden in Frankfort, wherein Thomas Bodley's heirs are complainants, and Ambrose Walden et al. are defendants in chancery, said deponent, being first duly affirmed and cautioned to depose the whole truth, doth depose and say: That he resides in the county of Mason; that he is aged 49 years; and further saith, in answer to the several interrogatories propounded to him by the complainants, that he was at the house of Major Walter Lacey at the time Simon Kenton's deposition was taken in this suit, in the year 1832; that his deposition was taken before him as a justice of the peace for Mason county.

In answer to the second this deponent saith, that Simon Kenton, in his deposition, represented the cabin originally made by him to have been made near the *the* Flat fork of Johnson's fork of Licking, on the N. W. side of said fork.

3d. In answer to the third this deponent saith, that, from the manner in which the said Kenton expressed himself in pointing out the ground on which he built the cabin, that he, Kenton, had his doubts as to the place, saying, that the face of the country had greatly changed.

4th. In answer to the fourth this deponent saith, Simon Kenton, in answer to a question propounded by Walter Lacy, did virtually contradict what he had stated in *in* a former part of his deposition, on account of which Mr. Wickliffe remarked to him, that if the statements he then made were true, his deposition was useless, and did not write down the expression of Kenton; but, after some explanation, Kenton concluded he was mistaken upon the whole; from Kenton's expressions, expressions of doubt, I was confident he spoke more from impression than from a knowledge of the facts in reference to the place where the cabin was located.

5th. In answer to the fifth this deponent saith, that Robert Wickliffe wrote the deposition of Simon Kenton; and further this deponent saith not.

LEVI VAUCAMP.

KENTUCKY, *Mason county, sct*:

I, James Artus, one of the justices of the peace in and for the county of Mason, State of Kentucky, duly commissioned, sworn, and acting as such, and, by virtue of my commission, being one of the judges of the county court, in and for said county, do certify, that, at the request of the plaintiffs in said suit, I caused the deponent, Levi Vauchamp, to come before me at the time and place stated in the caption; that I did not cause any notification to be given to the adverse party, because the witness aforesaid was only to depose in answer to certain interrogatories certified to me from said United States court, which I herewith enclosed and returned. The said witness was by me carefully examined, cautioned, and sworn, to testify the whole truth in answer to the interrogatories put to him, that is to say: the said Vaucamp, in answer to the five interrogatories to him and Athelston Owens, the said deposition of said Vaucamp was wholly reduced to writing, and read by himself in my presence. And I do further certify, that I am not of counsel or attorney to either of the parties, nor interested in the event of the cause; and the said Vaucamp testified that he had no interest in the event of said suit; all which I do certify to said court, as the cause and manner wherefore said deposition was taken.

Given under my hand, this 25th day of October, 1834.

JAMES ARTUS.

Deposition of John Warick.

Also the deposition of John Warick, at the counting house of Elijah Johnson & Son, in the village of Mays Lick, on the 24th day of October, 1834, taken for the same purpose; said deponent being first duly sworn and cautioned to depose the whole truth, deposeth and saith, that he is aged 57 years; and saith, in answer to the first interrogatory:

This deponent saith he became acquainted with the lands in controversy about the year 1794, or the winter before Harve's treaty.

FLEMING COUNTY, *ss:*

Anne Threlkeld and John Threlkeld came before the subscriber, a justice of the peace for said county, and made oath that the statements made of their own knowledge in the foregoing answer are true, and that such as are made from information they believe to be true.

Given under my hand the day of September, 1815.

"N. FOSTER, *J. P. F. C.*"

"The answer of John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lorenda Proctor, children and heirs of Jeremiah Proctor, deceased, by Mary Thomas, their mother and guardian, appointed for that purpose, to a bill in chancery exhibited against them and others, in the Fleming circuit court, by Bodley, Hughes, and Robert Pogue. These defendants, by their said guardian, for answer say, that they hold and claim, by title, to nearly one hundred and fifty acres of Walden's claim, but whether the same is superior to the complainants' claim or not defendants do not know, being infants of tender years; and they therefore put the complainants upon full proof of their claim and title. These defendants further say, that they, and those under whom they claim, have held and occupied the said 150 acres of land for at least twenty years before the complainants brought the suit to which this is an answer, as they are informed, believe, and expect to prove to this honorable court; and they plead such length of possession as a bar to the recovery set up in the bill. If it should be required of them they will, in due time, present to your honors, as evidence in the cause, their title-papers, showing the various transfers from Walden down to their father. These defendants, being infants of tender years, deny all fraud, &c., and pray this honorable court to save and protect their interests, and then to dismiss them, with their costs herein expended."

REID, *Atto. for def'ts.*

FLEMING COUNTY, *ss:*

Mary Thomas, guardian for the infants named in the foregoing answer, this day came before the subscriber, a justice of the Peace of Fleming county, and made oath that so much as is stated therein of her own knowledge is true, and that so much as is stated from information she believes to be true.

8th September, 1815. N. FOSTER.

At a court continued and held as aforesaid, on Friday, the 8th day of March, 1816, "ordered, that this cause be continued until the next circuit court."

At a court continued and held as aforesaid, on Thursday, the 6th day of June, 1816, "ordered, that this cause be continued until the next circuit court."

At a court held as aforesaid, on Monday, the 2d day of September, 1816, "ordered, that this cause be continued until the next circuit court."

At a court continued and held as aforesaid, on Monday, the 10th day of March, 1817, "ordered, that this cause be continued until the next circuit court."

At a court continued and held as aforesaid, on Wednesday, the 11th day of June, 1817:

"It is agreed that either party may file in this suit, to be used as evidence, copies of any depositions which have been taken or used as evidence in any of the following suits: Bodley and Hughes against McKee, in the general court, same against Shannon, &c., same against Craig and others, and Clarke against Gale's heirs, in the Bath circuit court, Bodley, &c., against Taylor, in the Federal court, George Stockton, under Howard and Overton's claim, against Lee and others, in the Nicholas circuit court, or copies out of any other suit, whether either of the parties were named or not in such suit, and such copies shall have the same effect as if the depositions had been regularly taken in this suit. And it is also agreed that either party may take the depositions of any other witness they may wish to have examined in this suit, giving notice to the adverse party of the time and place of taking the same, subject to all legal exceptions, as to competency or credulity. And [it] is further agreed [that] the survey made out by Z. Eastin in the suit [of] Bodley and Hughes against Shannon, &c., and the survey made out by Hugh Fulton in the suit Bodley and others against Craig, &c., in the Bath circuit court, and the survey in the suit Bodley, &c., against Taylor, in the federal court, may be used in this suit, and either party may be at liberty to have such amendments and additions made to said surveys by the surveyor of Fleming county, as they may direct, without giving notice to the adverse party; but neither party in taking copies of depositions from other causes shall exceed the amount of twenty dollars for such copies, and, if he does so, shall not recover such overplus of his adversary.

June the 11th, 1817.

THOMAS BODLEY, *for Complainants.*
WALKER REED, *Att'y for Def'ts.*

And the cause is continued until the next circuit court.

And the complainants in this suit agree that the defendants may take depositions to prove the length of time they have been in possession of the premises in controversy without notice, and that such depositions may be used as evidence in this cause, subject to any exception as to competency or credibility.

At a court continued and held as aforesaid, on Wednesday, the 3d day of September, 1817, "ordered, that this cause be continued until the next circuit court.

At a court continued and held as aforesaid, on Wednesday, the 4th day of March, 1818, "ordered, that this cause be continued until the next circuit court.

At a court continued and held as aforesaid, on Thursday, the 11th day of June, 1818:

This day came the parties, by their attorneys, and this suit is discon-

tinued as to the heirs of Jeremiah Proctor, deceased, Anne Threlkeld, and John Threlkeld, and ordered that they recover of the complainants their costs herein expended, and the cause is continued as to the other defendants.

At a court continued and held as aforesaid, on Friday, the 12th day of September, 1818, "ordered, that this be continued until the next circuit court." And on motion of the complainants leave is given them to amend their bill herein, which was done, and said amendment filed, and is as follows, to wit:

Your orator, Thomas Bodley, respectfully shows, that since the filing the original bill in this suit by your orator and his co-complainants, James Hughes and Robert Pogue, the said James Hughes, by deed bearing date the 11th day of October, 1815, and now recorded in the clerk's office of the Mason county court, transferred and conveyed to your orator all the right, title, and interest of him, the said Hughes, to the land in controversy in this suit, as well as the other lands held jointly or in common between your orator and the said James Hughes, to a copy of which deed your orators refer and make the same a part of this bill. Your orators show further, that on the 18th day of the present month, (August, 1818,) the said James Hughes departed this life. Your orator, Thomas Bodley, therefore prays that this suit may abate, as to the said James Hughes, and stand in the name of your orator and his co-complainant, Robert Pogue, only, against such defendants; and that your honor grant the relief prayed for in the original bill by your orator and said Hughes to your orator, Thomas, only; and grant such other and further relief as to equity may belong. And your orator will ever pray, &c.

J. A. PAXTON, *for Complainants.*

The deed from James Hughes and wife to Thomas Bodley, referred to and made a part of the foregoing amended bill, is in the words and figures following, to wit:

This indenture, made the 11th day of October, in the year of our Lord 1815, between James Hughes and Mary, his wife, of Franklin county, Kentucky, of the one part, and Thomas Bodley, of Lexington, Fayette county, of the other part, witnesseth: That the said James Hughes, for and in consideration [of] about the sum of twenty-seven thousand dollars received by him, as set forth in an article of agreement between the parties, bearing date the 17th day of July, 1815, and in order to carry said agreement into effect, hath granted, bargained, and sold, and by these presents doth bargain, sell, and convey, unto the said Thomas Bodley, his heirs and assigns, forever, all the right, title, claim, and interest of him, the said James Hughes, his heirs, &c., in and to the following tracts of land heretofore held in manner hereafter mentioned, to wit: So much of one undivided moiety as has not been conveyed by him by virtue of any sales made by either of them in and to the following tracts of land, to wit, sixteen thousand acres surveyed on part of an entry of 20,000 acres made in the name of John Tebbs

and company, on the 31st of July, 1783, lying on the waters of Johnson's fork, and the north fork of Licking, in Mason and Fleming counties, patented to said Bodley the day of , and one half thereof conveyed by him to said Hughes; also 3,000 acres, entered and surveyed in the name of David Blanchard, adjoining the above mentioned 20,000 acre tract at the southeast corner, patented to said Bodley and Hughes the 11th day of February, 1799; also one other tract of 10,000 acres, entered and surveyed in the name of Robert Clarke, near the Upper Blue Licks, patented to said Bodley and Hughes; also one other tract of 6,052 acres in Mason county, adjoining Shannon's settlements and pre-emption, entered in the name of John Marshall, patented to Thomas Marshall, and with certain reservations contained in the deed conveyed by Lewis Marshall to said Bodley and Hughes. All which tracts have been heretofore jointly held in partnership between said Bodley and Hughes. Also one undivided third part of 10,000 acres of land, entered in the name of John Tebbs and Henry Crutcher, patented to Willoughby Tibbs and Robert Rutherford, and by sundry conveyances transferred to the said Bodley, Hughes, and Robert Pogue. Also all his, said Hughes', interest in and to the purchase made by said Bodley, Hughes, and Pogue, from John Taylor, of Caroline county, Virginia, of 3,000 acres of land, on Johnson's fork of Licking; which said last mentioned tracts of land have been jointly held in partnership between the said Bodley, Hughes, and Pogue; the said several tracts herein before mentioned being particularly bounded and described in the several original surveys and patents which are hereby referred to; and the said James Hughes, for himself, his heirs, &c., by these presents, doth give up and relinquish, transfer and convey, to the said Thomas Bodley, his heirs and executors, administrators, or assigns, all right, title, claim, and benefit to be derived from any and all of the contracts heretofore made by them, or any person for them, respecting the said lands or any part thereof, together with the appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land hereby conveyed, with the appurtenances, unto the said Thomas Bodley, his heirs and assigns, forever. And the said James Hughes, for himself, his heirs, &c., the before described interest in the before described tracts of land, against the claim or claims of all persons claiming by, through, or under him, but against no other claim whatever, unto the said Thomas Bodley, his heirs and assigns, doth and will warrant and defend by these presents. But it is understood and is the true intent and meaning of this indenture, that in the case the whole or any part of said land should be lost or taken by any other claim, the said Hughes, his heirs, &c., are not to be liable to refund any part of the consideration, or be subject to any costs or damages, as the said Hughes only sells his right without any recourse or liability in any event whatever.

In testimony whereof the said James Hughes and Mary, his wife, have hereunto set their hands and seals, the day and date first above written.

J. HUGHES, [SEAL.]
MARY HUGHES. [SEAL.]

Executed in presence of—

Memo. It is further understood, that if any partnership land, sold by the said Hughes previous to the 7th day of July, 1815, is unconveyed, the said Hughes does not warrant against such claimant, but a title is to be made by the said Bodley.

FRANKLIN COUNTY, *ss:*

I, Willis A. Lee, clerk of the county court of the county aforesaid, do certify, that this deed, from James Hughes and Mary, his wife, to Thomas Bodley, was produced to me on the 11th day of October, 1815, and was acknowledged by the said James and Mary to be their act and deed for the purposes therein mentioned; and she, the said Mary Hughes, being by me examined separate and apart from her husband, as the law directs, and freely and voluntarily relinquished her right of dower in and to the premises, without the threats or persuasions of her said husband, and was willing the same might be recorded as such; whereupon the same is certified to the clerk of the county court for the county of Mason.

In testimony whereof I have hereunto set my hand as clerk, the date above written.

WILLIS A. LEE, *Clerk.*

STATE OF KENTUCKY, *Mason county, ss:*

I, Marshall Key, clerk of the county court for said county, certify, that this deed of conveyance, from James Hughes and Mary, his wife, to Thomas Bodley, was this day produced in my office, with the acknowledgment before the clerk of the county court of Franklin county, and the same is duly recorded.

Given under my hand, this 15th November, 1815.

MARSHALL KEY.

FLEMING COUNTY,

Clerk's office, November 7th, 1818.

I, James Crawford, deputy clerk of the court for said county, certify, that this deed, from James Hughes and wife to Thomas Bodley, was this day produced in my office, and by virtue of the certificate of the clerk of Franklin county court, is duly recorded.

JAMES CRAWFORD.

A true copy from record.

Teste:

JAS. CRAWFORD,
Deputy clerk Fleming county court.

At a court continued and held as aforesaid, on Thursday, the eleventh day of March, 1819, ordered that this cause be continued until the next circuit court.

At a court continued and held as aforesaid, on Saturday, the 12th day of June, 1819, the complainants in this cause moved the court to set aside the discontinuance awarded in this cause at the last June term of this court, and the said motion is continued until the next court.

At a court continued and held as aforesaid, on Saturday, the 11th day of September, 1819, this day came the complainant, by his attorney, and on his motion leave is given him to amend his bill filed herein, which amendment was accordingly made and filed, and is as follows, to wit:

Your orators beg leave, as an amendment to their original bill to state, that since the filing of the original bill they have discovered that the heirs of Jeremiah Proctor, to wit, John, Thomas, William, Jeremiah, Rachel, and Lucinda Proctor, who were made defendants to the original bill, and charge to hold title under the patent in the name of Walden and John and Anne Threlkeld, who were also charged by the original bill as holding title, ☞ against whom the original bill was discontinued at September, 1818, and against whom it is now prayed to be revived, and the papers and proceedings in the original suit made a part hereof, ☜, (all of whom are now prayed to be made defendants to this amendment, as well as the original bill,) do not in fact hold title, but possession only; and that the legal title to the land aforesaid, patented in the name of John Walden, is now vested in his heirs, whose names are unknown to your orators, who are prayed to be made defendants to this bill and the original, and the same relief granted to your orators against them as is prayed for in the original bill against the other defendants; and that by your final decree you will compel the said unknown heirs to convey their elder legal title to your orators. Your orators pray the writ of subpœna directed to said heirs of Jeremiah Proctor and John and Anne Threlkeld, who hold and keep your orators out of possession, and by your final decree you will compel said unknown heirs to convey to your orators their elder legal title, and the defendants aforesaid, who are in possession, to surrender possession to your orators; and he as in duty bound will ever pray, &c.

☞Amendment marked ☞ thus, made by interlining, with leave of the court, June 16th, 1824.

Upon the foregoing amended bill, process issued in the words and figures following, to wit:

The Commonwealth of Kentucky, to the sheriff of Fleming county, greeting:

We command you to summon the unknown heirs of John Walden, deceased, and John Proctor, Rachel Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, and Lorenda Proctor, children and heirs of Jeremiah Proctor, deceased, and John Threlkeld and Anne Threlkeld, to appear before the judge of the Fleming circuit court, at the court-house, in the town of Flemingsburg, on the first day of the next March term, to answer the original and amended bills filed in the said court against them and others by Thomas Bodley and Robert Pogue, and this they shall not omit under the penalty of £100 each, and have then there this writ.

Witness Leakin D. Stockton, clerk of said court, this 15th day of September, 1819, in the 28th year of the commonwealth.

L. D. STOCKTON.

Upon which the sheriff made the following return, to wit:

Executed on John Threlkeld on the 11th February; also on Rachel Proctor and Anne Threlkeld on same day; on William Proctor, John Proctor, Lorenda Proctor, and Jeremiah Proctor, on the 17th February, 1820; John Walden's heirs and Thomas Proctor not found.

L. D. STOCKTON, *D. S., for*
JAMES PARKS, *S. F. C.*

And it appearing to the satisfaction of the court that the defendants, the unknown heirs of John Walden, deceased, are not inhabitants of this commonwealth, and they having failed to enter their appearance herein agreeably to law and the rules of this court, it is ordered, that unless they do appear here on or before the first day of the next March term of this court, and file their answer, plea, or demurrer to the complainants' bill, that the same shall be taken for confessed against them, and that a copy of this order be inserted in some duly authorized newspaper of Kentucky, for two months successively, according to law; and the cause is continued until the next circuit court.

At a court continued and held as aforesaid, on Tuesday, the 7th day of March, 1820, this day came the defendants, Anne Threlkeld and John Threlkeld, and filed their joint answer to the complainants' bill herein, which is as follows, to wit:

The answer of Ann Threlkeld and John Threlkeld to a bill and amended bill in chancery, exhibited against them in the Fleming circuit court by Thomas Bodley, &c.

These defendants, jointly and severally, saving and reserving every exception to the complainants' said bills, for answer thereto, say, that they refer to their former answer in this cause, and to the proceedings therein, for the purpose of shewing the manner in which they derive title, and also to show that the discontinuance in said suit was wholly voluntary on the part of the complainants, and entered to prevent a decree being entered dismissing the bill as to these defendants, after years of procrastination produced by the complainants' own inattention, and without any fraud or concealment of the truth on the part of these defendants, who had used every exertion to bring the suit to a speedy trial, and by their attorney admitted the use of plats and depositions from other causes which the complainants had, nor had he even filed a title paper. These defendants therefore pray, that the voluntary act of the complainants in discontinuing the cause at June term, 1818, may stand unimpaired, and that your honor may not allow the amended bill to have even the effect of a new suit. But if this honorable court should deem it consistent with the principles and practice of courts of chancery to allow the complainants thus to proceed, then your defendants, in addition to their former plea of twenty years' possession under title before suit brought, plead that they have had peaceable and uninterrupted possession for more than seven years before the filing of the said amended bill, which was under title fairly and equitably, and they trust legally, derived from the patentee, and which, according to the

statutes in such cases made and provided, they are advised is a complete bar to the complainants' claim These defendants will hereafter exhibit and prove their title to this honorable court; and denying all fraud and unlawful combination, they pray to be hence dismissed with their costs, &c.

REID, *Attorney*.

John and Ann Threlkeld made oath before the subscriber, a justice of the peace for Fleming county, that the facts stated in the foregoing answer, of their own knowledge, are true; and that such as they state from information, they believe to be true—this 6th March, 1820.

HENRY BRUCE.

At a court continued and held as aforesaid, on Thursday, the 9th day of March, 1820, this day came the defendants, the heirs of Jeremiah Proctor, deceased, and filed their joint answer to the complainants' bill, which is as follows, to wit:

The answer of John Proctor, William Proctor, Jeremiah Proctor, Thomas Proctor, Rachel Proctor, and Lorenda Proctor, infant heirs of Jeremiah Proctor, deceased, by Mary Thomas, their mother and guardian, appointed to defend the cause in chancery, in Fleming, brought by Thomas Bodley, &c., saving and reserving every right of exception to the many errors and misstatements contained in the original and amended bill, the said defendants say, for answer:

That on the 10th of March, 1804, one Andrew Kinkead conveyed by deed to their father, Jeremiah Proctor, deceased, one hundred and fifty acres of land, by metes and bounds, subject to certain deductions, as in said deed mentioned, of sundry lots in the town of Vernon; which deed is duly recorded in the county of Fleming, and a copy thereof made a part of this answer.

That the said Kinkead had previously procured a deed for the same of Ambrose Walden, devisee of John Walden, deceased, bearing date December 17th, 1796, and duly recorded in the county of Mason, a copy of which is made part hereof; and which 150 acres is part of John Walden's claim of 1666⅔ acres, the entry for which they are advised to say is good, and the patent in strict conformity to entry, both of which they will file.

They state that the discontinuance of the cause entered at the June term, 1818, at your honorable court, was voluntary on the part of the complainants, and made to prevent a decree in favor of these defendants, after waiting an unsual length of time for the complainants to prepare for trial. These defendants therefore plead, in addition to the facts stated in their former answer, which is referred to and made part of this, that they have had seven years quiet and peaceable possession of said lands, before the filing of the complainant's amendment, which ought, at most, only to be considered as a new suit; and they plead the statutes in such cases made and provided against the said complainant's claim, provided your honor allows it to have the effect of a new suit, averring that their title was complete, and even if not so at law, that it was and is such as would enable them to have coerced the legal title from John Walden, the patentee.

They deny any agreement or mistake made by themselves, or attorney, who produced the said discontinuance, and all fraud and unlawful combination; and pray that the said discontinuance may stand unaltered, and that they may be dismissed hence with their costs in this behalf expended.

REID, *for Defendants.*

FLEMING COUNTY, *ss:*

Mary Thomas, guardian to defend for the infants within named, made oath, that the facts stated within, so far as they came within her own knowledge, are true, and so far as they are stated from information they believe it to be true.

"HENRY BRUCE."

The entry of John Walden, referred to in the foregoing answer, is copied on page 32.

The deed from Kinkead and Proctor, referred to and made part to the foregoing answer, is as follows, to wit:

"This indenture, made the tenth day of March, one thousand eight hundred and four, between Andrew Kinkead and Ann, his wife, of Fleming county, State of Kentucky, of the one part, and Jeremiah Proctor, of the county and State aforesaid, of the other part, witnesseth: That the said Andrew and Ann, his wife, for and in consideration of the sum of five hundred pounds current of the State aforesaid, to them in hand paid by the said Jeremiah, before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain and sell, alien and confirm, unto the said Jeremiah, his heirs and assigns forever, a certain tract or parcel of land, situate and being on the waters of Johnson's fork of Licking, in the aforesaid county of Fleming, being part of a tract of 1,666⅔ acres patented to John Walden, and being that part of said tract conveyed to the said Andrew by Ambrose Walden, devisee of the said John Walden, by deed bearing date the 17th day of December, 1796, and now remaining of record in the office of the clerk of the Mason county court, in Liber C, folio 523, and bounded as follows, to wit: Beginning at a large white oak, John Walden's old corner, and running thence north 71 degrees west, 200 poles, to a large black oak, sugar tree, and blue ash; thence south 19 degrees west, 120 poles, to a box elder and red elm; thence south 71 degrees east, 200 poles, to a stake in said Walden's line; thence north 19 degrees east, 120 poles, to the beginning, containing by estimation 150 acres; subject, nevertheless, to the following deductions, viz: Mr. Chapin's lot, whereon he now lives, containing about 7 acres; also the lot known as that of Dr. Samuel McAden, though owned by the said Chapin; John Sherry's lot, Jonathan Rose's lot, James Shanklin's and one other lot, originally sold to William Ricketts, supposed to be now owned by a blind man, near the Lower Blue Licks; the several lots reserved as aforesaid in this transfer, being within the lines of the said 150 acres, and so reserved from their having been transferred to the

several claimants by the trustees of the town of Vernon, of which they constitute a part. Together with all and singular the privileges and appurtenances whatsoever to the hereby granted premises belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand of them, the said Andrew and Ann, his wife, of, in, and to the same. To have and to hold the land above described, (subject to the deduction aforesaid,) with the appurtenances, unto him, the said Jeremiah, his heirs and assigns, to his and their only proper use, benefit, and behoof forever. And the said Andrew and Ann, his wife, for themselves, their heirs, the land and premises above described, (subject to the deduction aforesaid,) with the appurtenances, unto him, the said Jeremiah, his heirs, executors, administrators, and assigns, against the title, claim, or demand of all and every person or persons whatsoever, shall and will warrant and forever defend by these presents.

In testimony whereof the said Andrew and Ann, his wife, have hereunto set their hands and seals, the day and year first above written.

A. KINKEAD, [SEAL.]
ANNE KINKEAD. [SEAL.]

FLEMING COUNTY, *ss:*

We, the subscribers, two of the commonwealth's justices of the peace for said county, do certify, that Ann Kinkead, wife of the within named Andrew Kinkead, this day personally appeared before us, and voluntarily and without the *cer*tion of her said husband, relinquished her dower and right of dower in the premises within mentioned, to Jeremiah Proctor, his heirs and assigns, and desired that the same might be recorded. Given under our hands and seals, the 10th day of March, 1804.

N. FOSTER, [L. S.]
R. BARNES, Jr. [L. S.]

FLEMING COUNTY *ss:*

I, Thomas Dougherty, clerk of the Fleming circuit court, being authorized by law to receive and admit to record in my office deeds and other writings, do certify, that the foregoing indenture of bargain and sale from Andrew Kinkead and Ann, his wife, to Jeremiah Proctor, was this day produced before me, acknowledged by the said Andrew and Ann, his wife, and is (together with the certificate of N. Foster and R. Barnes, jr., thereto annexed, and this certificate,) duly recorded in my office.

Given under my hand the 10th day of March, 1804.

Teste: THOMAS DOUGHERTY."
A copy. Teste: JOSHUA STOCKTON, *Clk.*

The deed from Walden to Kinkead, referred to and made a part of the foregoing answer, is as follows, to wit:

"This indenture, made this 17th day of December, in the year of our Lord God one thousand seven hundred and ninety-six, between

Ambrose Walden, of the county of Fauquier, and State of Virginia, of the one part, and Andrew Kinkead, of the county of Mason, and State of Kentucky, of the other part, witnesseth: That the said Ambrose Walden, for value received, hath bargained and sold unto the said Andrew Kinkead, and to his heirs or assigns forever, one certain tract or parcel of land, containing one hundred and fifty acres, said land being the property of John Walden, deceased, of Caroline county, in the State of Virginia; the power of conveying said land is invested in said Ambrose, son of John Walden, by his father's last will and testament, being part of a tract sixteen hundred and sixty-six acres and two-thirds of an acre, situate in county [of] Mason, on the waters of Johnson's fork of Licking, by patent dated the 21st day of November, 1786, and bounded as follows, to wit: Beginning at a large white oak, John Walden's old corner, and north 71 degrees west, 200 poles, to a large black oak, sugar tree, and black ash; thence south 19 degrees west, 120 poles, to a box elder and red elm; and south 71 degrees east, 200 poles, to a stake; said Walden's old line, north 19 degrees east, 120 poles, to the beginning. To have and to hold the said tract of land, with all and singular the appurtenances thereunto belonging, to the said Andrew Kinkead, to his only proper use and behoof; and the said Ambrose Walden, for himself, his heirs, executors, and administrators, the said tract or parcel of land unto the said Andrew Kinkead, his heirs or assigns, shall and will warrant and forever defend against the claim of him, the said Ambrose Walden, or any person or persons whatsoever. In witness whereof the said Ambrose Walden hath hereunto set his hand and seal, the day and year first above written.

"AMBROSE WALDEN." [SEAL.]

Signed, sealed, and delivered, in presence of—

J. P. CAMPBELL,
JOHN POAGE, Sr.,
JOHN POAGE,
SAM'L MC KEE, Jr.

MASON COUNTY, *ss:* *December court*, 1796.

This indenture of bargain and sale, from Ambrose Walden to Andrew Kinkead, was acknowledged by the said Ambrose a party thereto, and ordered to be recorded.

Teste: T. MARSHALL, JR., *C. M. C.*
A copy. Attest: MARSHALL KEY,
Clerk Mason county court.

The patent of John Walden, referred to in the foregoing answer, is as follows, to wit:

"Patrick Henry, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of a land office Treasury warrant No. 2706, issued the 18th day of February, 1780, there is granted by the said commonwealth unto John Walden, a cer-

tain tract or parcel of land, containing 1666⅔ acres, by survey bearing date the 27th day of December, 1785, lying and being in the county of Fayette, on the waters of Johnson's fork, adjoining Ambrose Walden's survey of 1333 acres on the S. and E. sides, and bounded as followeth, to wit: Beginning on the southwest corner of said Walden's survey at a hickory, white oak, and red oak, and thence S. 68° E., 450 poles, to an ash, Spanish oak, buckeye, and mulberry, at the S. E. corner of said Walden, and with a line of the same, N. 22° E., 164 poles, to two sugar trees and two white oaks in said Walden's line; thence S. 68° E., 284 poles, to a locust, white oak, and coffee trees; thence S. 22° W., 464 poles, to two small Spanish oak and cherry; thence N. 68° W., 734 poles, to a hickory in a bend of Johnson's fork; thence N. 22° E., 300 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Walden and his heirs forever.

In witness whereof the said Patrick Henry, esquire, governor of the Commonwealth of Virginia, hath hereunto set his name and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 1st day of November, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the 11th.

P. HENRY.

A copy. Attest: O. BELT, *D.*, *for*
JNO. M. FOSTER, *R. L. O.*

At a court continued and held as aforesaid, on Wednesday, the 15th day of March, 1820, the motion of the complainant, made at the June term of this court, 1819, to reinstate this cause, this day came on to be heard; whereupon, it was ordered that the said motion be overruled, and ordered that the defendants recover of the complainants their costs about this motion expended. And at a court continued and held as aforesaid, on Thursday, the 16th day of March, 1820, ordered that this cause be continued until the next circuit court.

At a court continued, and held as aforesaid, on Wednesday, the 14th day of June, 1820, this day came the parties by their attorneys, and filed herein their written admission of facts, and the cause is continued until the next term of this court.

"The admission of facts filed by the foregoing order cannot be found."

At a court continued and held as aforesaid, on Saturday, the 9th day of September, 1820, this day came the parties, by their attorneys, and the amended answer of John and [Ann] Threlkeld and Jeremiah Proctor's heirs is filed herein, by consent, without oath; and the cause is continued until the next circuit court.

Which amended answers are as follows, to wit:

"The defendants, John and Anne Threlkeld, in this cause, by and with the consent of the complainants, jointly amend their several answers herein, by stating that they and those under whom they claim have been in the actual and uninterrupted possession of the land now

claimed by them under the patent for 1666⅔ acres, granted to John Walden, (which is filed in this suit,) for seven years and upwards before the commencement of this suit, to wit, for twenty years and upwards before the complainants filed their original bill herein against them, and that their possession was under the title of said Walden, and was, as was also the title under which they claimed, adverse and hostile to the title of the complainants; and the said defendants plead, insist, and rely upon the several statutes now in force in this commonwealth, limiting the right of entry into and of suit to recover land so as aforesaid held and possessed under title adverse and hostile, as a complete bar to complainants' right of suit, or to have any decree in their favor; wherefore, as well as because their said claim and title is superior in equity, they pray to be hence dismissed with their costs, &c.

The defendants, the heirs of Jeremiah Proctor, by their guardian, Mary Thomas, amend their answer to the bill of the complainants, as follows: They state that they obtained title to acres of land, under a patent granted to John Walden for 1666⅔ acres, whose devisee conveyed the said acres to Andrew Kinkead, who conveyed the same to [the] ancestor of these defendants, from whom it descended to them, and they exhibit copies of the said patent and deeds as a part of their answer; and they expressly charge, that they, and those under whom they claim, have been in the actual and uninterrupted possession of the land so as aforesaid claimed by them for 7 years and upwards, to wit, for the term of 20 years and upwards, next before the commencement of the complainants' suit, and that such their possession and title was and is hostile to the claim and title of complainants; and they plead, insist, and rely upon the several statutes in force in this commonwealth, limiting the right of entry into and of action, suit, &c., to recover land so as aforesaid claimed and possessed under title, as a complete bar to the complainants' right to have or maintain their bill, and to the rendition of any decree in their favor. And these defendants, further answering, protest against the attempt of the complainants to attach the bill, to which this is an answer, to the bill formerly filed against them by way of amendment, because they say that the said former bill was fully, fairly, and finally disposed of, and cannot, as they contend, be considered as attached to or connected with the present suit; and these defendants pray to be hence dismissed with their costs, &c.

CHAMBERS, *P. D.*

For the patent and deeds, referred to and made part of the foregoing answer, see page 49 for deed Kinkead to Proctor, page 52 for deed from Walden to Kinkead, and page 54 for Walden's patent.

At a court continued and held as aforesaid, on Friday, the 9th day of March, 1821, ordered, that this cause be continued until the next circuit court.

At a court continued and held as aforesaid, on Friday, the 8th day of June, 1821, ordered, that this cause be continued until the next term.

At a court continued and held as aforesaid, on Friday, the 14th day

of September, 1821, ordered, that this cause be continued until the next term.

At a court continued and held as aforesaid, on the day of March, 1822; this cause was continued until the next term.

At a court continued and held as aforesaid, on Thursday, the 6th day of June, 1822, ordered, that this cause be continued until the next term.

At a court continued and held as aforesaid, on Wednesday, the 4th day of September, 1822, this day came parties, by their attorneys, and upon motion of the defendants, it is ordered that the surveyor of Fleming county do go upon the lands in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same as either party may require, having due regard to all deeds and other evidences to him produced, report all matters of fact specially, and return four fair plats and reports thereof to the clerk's office before the day of trial; and the sheriff is directed, upon request, to attend said surveyor and remove force, if any should be offered; and the cause is continued until the next term at the costs of the defendants. "And upon motion of the complainants, *he* has leave to amend *his* bill herein, which amendment was thereupon produced, and is ordered to be filed, and is as follows, to wit:

"An amendment to the bill of Thomas Bodley and Robert Pogue, to their bill in chancery against Walden, Proctor's heirs, &c., in the Fleming circuit court: Your orator states, that since the commencement of this suit Lucinda Proctor, one of the defendants, hath intermarried with Levi Thomas, who is prayed to be made a defendant herein, and charged as in the original bill with the same prayer, &c.; and your orators further charge, that the said defendant, Levi Thomas, is committing waste on the premises by cutting and destroying timber, &c.; they therefore pray an injunction against the defendants, to stay waste, &c." Upon the foregoing amended bill process issued in the words and figures following, to wit:

"The Commonwealth of Kentucky, to the sheriff of Fleming county, greeting:

We command you to summon Levi Thomas to appear before the judge of the Fleming circuit, at the court-house, in the town of Flemingsburg, on the first day of the next March term, to answer a bill and amended bill in chancery, exhibited against him, &c., by Thomas Bodley and Robert Pogue, and this he shall in no wise omit under the penalty of $100, and have then there this writ.

Witness Leakin D. Stockton, clerk of said court, at the court-house aforesaid, the 17th day of October, 1822, and in the 31st year of the commonwealth. L. D. STOCKTON.

Upon which the sheriff made the following return, to wit:

Executed November the 2d, 1822.

GEO. STOCKTON, *D. S.*
For WM. P. FLEMING, *S. F. C.*

At a court continued and held as aforesaid, on Wednesday, the 5th day of March, 1823, the defendant, Levi Thomas, this day produced in open court his answer, and swore to the same, which is ordered to be filed, and is as follows, to wit:

The answer of Levi Thomas, to a bill in chancery exhibited against him and others in the Fleming circuit court by Thomas Bodley and Robert Pogue. This defendant, saving all right of exception to the bill of the complainants, for answer to so much thereof as concerns him, sayeth, that it is true that since the pendency of this suit he has intermarried with Lucinda, one of the daughters and heirs at law of Jeremiah Proctor, deceased, and he insists and relies upon the answer and defence heretofore made by his wife, by her guardian in this suit, and not knowing of his own knowledge any thing of the validity of the claim of the complainants, or of their derivation of title, he prays that they may be put upon the complete proof of it in every respect. Further answering, this defendant denies that he is committing waste upon the land in controversy in this suit, without the improvement of that portion of it which has fallen to his wife be so called. This defendant denies all fraud and combination, &c., and relying upon the title and possession of the ancestor of his wife, and his legal representatives since his death, as heretofore stated and relied upon by the said heirs, he prays to be hence dismissed with his costs, &c.

CHAMBERS, *P. D.*

FLEMING CIRCUIT, *ss:*

The foregoing answer was produced in open court, and sworn to by said Thomas.

Att: L. D. STOCKTON, *C. F. C. C.*

At a court continued and held as aforesaid, on Thursday, the 6th day of March, 1823, upon motion of the defendants, leave is given them to file an attested copy of the last will and testament of Jno. Walden, deceased, as an exhibit in this cause, which was accordingly done in open court; and upon their further motion they have leave to withdraw their plats and reports of survey, returned and filed in this cause for the purpose of amending the same, and the cause is continued until the next term.

At a court continued and held as aforesaid, on Wednesday, the 4th day of June, 1823, the parties produced an agreement which by consent is ordered to be filed, and is as follows, to wit:

It is agreed, that the land in controversy, as woodland, is now worth ten dollars per acre, and in its present improved state it is worth and valued at twenty dollars per acre; but this admission is to have no effect upon any future controversy about the value of improvements, or of the land, except to show the value of it in any question of jurisdiction that may arise in the progress of the case.

June 4th, 1823. And upon motion of the defendants, Ann Threlkeld, John Threlkeld, and the heirs of Jeremiah Proctor, deceased, leave is given them to withdraw their title papers filed in this cause,

which was immediately done. And, also, that the surveyor have leave to withdraw the plats and reports of survey returned and filed in this office, for the purpose of amending the same as either party may require.

At a court continued and held as aforesaid, on Wednesday, the 4th day of September, 1823, it is agreed, that the papers in this cause shall be submitted to the court upon the written agreement of the counsel on both sides, to enable the court to give a decree at the next term. The defendant, John Thrailkeld, is permitted to take depositions relative to his possession and title without notice, before the 1st day of February next; the complainants are permitted to file with the papers, copies of Ambrose Walden's and John Walden's warrants, with the endorsements therein, before the said 1st day of February next. And by consent the complainants are permitted to withdraw their original title papers, on leaving copies attested by the clerk of this court, which are to have the same effect in this cause as the originals; and the cause is continued until the next term.

At a court continued and held as aforesaid, on Friday, the 5th day of September, 1823, by consent of the parties by their attorneys, leave is given the defendants to lay down and represent their several claims upon the connected plat already filed herein.

At a court continued and held as aforesaid, on Thursday, the 11th day of March, 1824, ordered, that this cause be continued until the next circuit court.

At a court continued and held as aforesaid, on Wednesday, the 16th day of June, 1824, on motion of the complainants, Bodley and Pogue, leave is given them to file their amended bill, suggesting the death of James Hughes, and that his interest had been conveyed to the complainant Bodley, (it appearing that the amendment heretofore filed hath been mislaid.) Ordered, that this suit abate as to the complainant Hughes, and stand in the names of the complainants Bodley and Pogue; and leave is also given the complainants to amend their amended bill filed herein, 11th September, 1819, by interlineations, stating the discontinuance as to part of the defendants, and referring to the papers and proceedings in the original suit, and making them part of the amended bill, which amendments were made and filed; and the cause is continued until the next circuit court; which amended bill, suggesting the death of James Hughes, &c., is as follows, to wit:

Your orator, Thomas Bodley, respectfully shows, that since filing the original bill in this suit, by your orator and his co-complainants, the complainant James Hughes, by deed bearing date the 11th day of October, 1815, and duly recorded in the clerk's office of the Mason and Fleming county courts, transferred and conveyed to your orator, Bodley, all the right, title, and interest of him, the said Hughes, to the land in controversy in this suit, as well as all other lands held jointly or in common between them; to a copy of which deed your orator refers and makes it a part of this bill. Your orators Bodley and Pogue, further show, that on the 18th day of August, 1818, the said

Hughes departed this life; your orators therefore pray that this suit be abated as to the complainant Hughes, and that it stand in the names of your orators, Bodley and Pogue only, Bodley claiming two-thirds, and Pogue only one-third of the land in controversy; and that your honor will grant the relief prayed for in the original and amended bill herein, which they refer to and make a part hereof, together with all the exhibits and depositions filed in the cause; and pray for such other and further relief as they may be entitled to in equity, &c.

BODLEY, *for complainants.*

For the deed from Hughes to Bodley, referred to and made a part of the foregoing amended bill, see back on page 35.

At a court continued and held as aforesaid, on Saturday, the 11th day of September, 1824:

This cause coming on this day to be heard upon the bill, answers, depositions, and exhibits, and the parties being heard by their counsel, the court took time to consider thereof until the next term. The complainant Bodley produced his affidavit and a statement of his counsel, which is ordered to be filed, and are as follows, to wit:

The complainant Bodley states, on oath, that he was taken by surprise by the objection made to reading the deed from Rutherford, Peyton, and Magill, to Bodley, Hughes, Campbell, and Pogue, because the same had not been recorded in the time required by law; which objection was made by the counsel of the defendants for the first time after the argument was opened by plaintiffs' counsel, and the deeds had been read. This affiant states, that he had no knowledge that the objection would be made or did exist, because the title papers had been acted on before in this court and sustained. He believes he can prove the deed by a subscribing witness, or can prove the handwriting of Buckner Thruston, who signed the names of Rutherford, Peyton, and Magill, as their attorney in fact, if he is permitted to do so without delay.

THOMAS BODLEY.

FLEMING CIRCUIT, *ss:*

September term, 1824.

The foregoing was sworn to in open court.

Attest: L. D. STOCKTON, *Clerk.*

Adam Beatty states, in his character as counsel for the complainants, that he was only engaged in this cause at the last term of this court, and is the only counsel for the complainants since that time engaged in the cause for complainants. That several of the original title papers were filed in the cause at the present term, the copies had been filed before, but not read by him, and that he had not even time to examine the whole of the papers before the cause came on for hearing, and in particular did not examine the manner in which the deed spoken of in Bodley's affidavit was authenticated, which was one of those filed at the present term, and just before the cause commenced; but from the inquiries he made of said Bodley he did not expect there was any

difficulty as to the recording of said deed, nor was he apprised of the objection until the cause had been opened by himself, and replied to by one of the counsel on the other side, and in part by the second counsel; he further states, that even after the case was opened by commencing the reading of the papers, the complainants permitted the defendants to take a deposition without notice, and to read the same as evidence in the cause. But he is now informed by said Bodley, that he gave his consent under these circumstances on yesterday to take said deposition; the undersigned asks that the court will take the case under advisement until the next term, and in the mean time give special leave to the complainant to take depositions to prove the execution of the said deed by the attorney in fact, Thruston, with an understanding that the case may be finally disposed of then, or continued, if the defendants wish to take rebutting depositions.

ADAM BEATTY,
Counsel for complainants.

And on motion of the complainants, leave is given them to take depositions, for the purpose of proving the execution of the deed from Rutherford, Peyton, and Magill, by their attorney in fact, Buckner Thruston, to Bodley, Pogue, Campbell, and Hughes, but for no other purpose; and the complainants have leave to withdraw said deed for the purpose of taking said proof; and the defendants are to be at liberty to take any rebutting evidence in relation to the execution of said deed, and also evidence to prove the execution of any of their title papers, or for any other purpose they may choose. And the defendants tendered to the court a bill of exceptions, which was signed, and sealed, and ordered to be filed, and made a part of the record herein, which is as follows, to wit:

Be it remembered, that this cause this day came on to be heard, and after the bill and amendments thereto, and answers of the defendants were read, the counsel for the complainants were proceeding to read the papers evidencing their title to the land in controversy, when the counsel for the defendants observed, they had objections to the reading of some of those papers, but if the complainants chose, they would go on and read the title papers on both sides, mutually reserving the right to except and urge the exception in the argument of the cause in chief to any of the deeds or other title papers offered by the adverse party, which being *exceeded* to the papers in the cause were all read, and the complainants' counsel opened the cause in argument, and in the course of his argument objected to the following deed as legal evidence in the cause, to wit:

MASON COUNTY, *to wit:*

We, the commissioners, appointed by the worshipful court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on o divide a tract of land, containing one thousand six hundred and six-y-six and two-third acres by survey, and patented in the name of John

Walden, between him, the said John Walden, and Lewis Craig, assignee of Craig and Johnson, who was assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, assignee as aforesaid, proceeded on this day to divide the lands in the said proportion, that is to say, one-third to the said Craig, and the other remaining two-thirds to the said John Walden, as follows, to wit: Beginning at Ambrose Walden's southeast corner, at a mulberry, Spanish oak, buckeye, and ash; thence south 76° east, 333 poles, to a white oak and two sugar trees, in John Walden's line; thence north 22° east, 44 poles, to two box elders and elm, in Mickey's line; thence with said Mickey's line west, 90 poles, to Mickey's corner, a red oak, hickory, and ash; thence with said line north, 144 poles, to an ash and iron wood, in Walden's line; thence with said line north 68° west, 190 poles, to two sugar trees and two white said Walden's corner, in Ambrose Walden's line; thence with said line south 22° west, 180 poles, to the beginning, containing one hundred and eighty-five acres, for the said Lewis Craig; and also divided as follows, to wit: Beginning at two white oaks and red oak, in Ambrose Walden's line, 112 poles, from said Ambrose Walden's southwestardly corner; thence south 22° west, 240 poles, to a white oak and two *beeches*, in Moseby's line; thence with said line south 63° east, 216 poles, to a sugar tree, ash, and white oak; thence north 33½° east, 210 poles, crossing Johnson's fork, to two sugar trees and white walnut; thence north 52 poles, to two sugar trees; thence north 22° east, 80 poles, to a hickory on the Flat fork of Johnson, in Ambrose Walden's line; thence north 61½° west, 236 poles, to the beginning, containing three hundred and seventy acres, to the said Lewis Craig. The two tracts of land, as above described, as his equal third in quantity and quality. To have and to hold the said quantity of five hundred and fifty-five acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said John Walden, his heirs and assigns, forever, and to hold to him, the said Lewis Craig, his heirs, and in severalty, and no longer subject to the claim of him, the said Walden. Also divided the tract of land, as follows, to wit: Beginning at Ambrose Walden's southwest corner and said John Walden's corner, called for in his patent, a hickory, white oak, and red oak; thence with Ambrose Walden's line, south 61½° east, 112 poles, to two white oaks and a red oak, corner to Lewis Craig; thence with his line south 22° west, 340 poles, to two *beeches* and white oak, in Mosby's line; thence with his line north 63° west, 112 poles, to a hickory [with] said John Walden's southwest corner; thence north 22° east, 342 poles, to the beginning, containing one hundred and eighty-five acres, for the said John Walden. Also divided the said tract of land, as follows, to wit: Beginning at Ambrose Walden's southeast corner and corner to Lewis Craig, an ash, Spanish oak, buckeye, and mulberry; thence south 76° east, 333 poles, to a white oak and two sugar trees, corner to said Craig; thence south 22° west, 380 poles, crossing Johnson's fork to two Spanish oaks and cherry tree,

said John Walden's southeast corner by patent; thence north 63° west, 510 poles, to a sugar tree, ash, and white oak, corner to said Craig, in Mosby's line; thence north 33½° east, 21 poles, to two sugar trees and white walnut; thence north 52 poles, to two sugar trees; thence north 22° east, 80 poles, to a hickory on the Flat fork, in Ambrose Walden's line; thence to the beginning, containing 925 acres, to him, the said John Walden, and his heirs, and forever, and in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee, *and assignee*, &c., and his heirs and assigns, forever; and we, the said commissioners, do certify and declare, the residue of the said survey in the name of John Walden is interfered with by a claim in the name of Daniel Mickey, and therefore not divided, but is on that account left in tenancy in common between the said John Walden and said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 14th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

At a court held for Mason county the 24th of April, 1797, this division of land between John Walden and Lewis Craig was returned, and ordered to be recorded.

A copy. Teste:

THOS. MARSHALL, JR., *C. M. C. C.*

And amongst other causes of objection*ed* urged, that the deed was not recorded in time after its execution to make it evidence as a record deed. And the defendants' counsel, in reply, in the course of their argument in chief, objected to the legality as evidence of the deed purporting to be from Willoughby Tibbs to John Peyton, to wit, (see back on page 20 for deed, Tibbs to Peyton,) because it was not recorded in time to make it evidence as a recorded deed; and the deed purporting upon its face to be the deed of Rutherford, Peyton, and Magill, by Buckner Thruston, their attorney in fact, to Bodley, Hughes, Pogue, and Campbell, to wit, (see back on page 12 for deed from Rutherford, Peyton, and Magill, by Thruston, to Bodley, Hughes, Pogue, and Campbell,) because it was not signed by the attorney in fact as such, was not recorded in time to make it evidence as a recorded deed, and was not in conformity to, or in pursuance of, the power under which it purports to be made. The complainants' counsel then replied to the argument of the defendants' counsel in chief, and the court intimated an intention to take time to consider of the case; and, after some time, the complainants filed the following affidavit and statement of counsel, to wit, (see back on pages 66 and '7 for affidavit and statement of counsel,) and prayed the court to continue the cause, for the purpose of giving them time to procure evidence of the execution of the last mentioned deed; to which continuance and giving time the defendants objected,

urging that they had been twice sued, and a most unreasonable time detained in court, and that the same objection had been taken to their evidence of title which they made to the complainants, at least so far as respected the recording in time. But the court overruled the objection, and gave the time asked for, and continued the cause for that purpose. To which opinion the *court* excepted, and prayed the court to sign this their exception, which is done.

W. P. ROPER. [SEAL.]

And the cause is continued until the next circuit court.

At a court continued and held as aforesaid, on Thursday, the 17th day of March, 1825, it appearing, to the satisfaction of this court, that the orders of publication against Ambrose Walden and the unknown heirs of John Walden have been duly published; and the said Ambrose Walden and the unknown heirs of John Walden having failed to enter their appearance according to the rules of this court, or to answer the complainants' bill, it is now ordered and decreed that the bill, as to them, be taken for confessed, so far as relates to all the land in the survey of John Walden of 1,666⅔ acres, except the part claimed by the defendants, John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, and of the survey of 1,333⅓ acres, in the name of Ambrose Walden, except 150 acres conveyed to Dale Carter; and thereupon the said cause came on to a final hearing upon the order aforesaid, taking the bill for confessed, and upon the bill, answers of the other defendants, exhibits, and depositions; and the cause having been fully heard, and the court having considered thereof, now decree and order that the said Ambrose Walden do, on or before the 1st day of June next, release and convey to the complainants the whole of the tract of land, containing by survey as aforesaid 1,333⅓ acres, except 150 acres sold and conveyed by Ambrose Walden, and which is now in the possession of Dale Carter, who was heretofore a defendant in this cause, but as to whom the bill has *herefore* been dismissed; and in case the said Walden shall fail or refuse to make said conveyance, then James Crawford is hereby appointed commissioner to release and convey the tract of land aforesaid, except as aforesaid to the said complainants. And the said James Crawford is also appointed a commissioner to convey, for and on behalf of the unknown heirs of John Walden, the whole of the tract of 1,666⅔ acres, according to the bounds of the survey, except so much thereof as is in the possession of the defendants, John Threlkeld and Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased; and the said commissioner is directed to make a report to the next court. And the court being of opinion that the said John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased, are protected by the length of their possession prior to the institution of this suit, as to them it is ordered, that the bill of the complainants be dismissed, and that they recover of the complainants their costs by them in this behalf expended. And the parties are hence dismissed without day.

And thereupon the complainants pray an appeal to the court of ap-

peals from so much of the decree as dismisses the bill as to John and Ann Threlkeld, and Jeremiah Proctor's heirs, which is granted them upon their entering into bond with Joseph C. Belt, their security, in the penalty of $300, in the clerk's office, within thirty days; which was executed accordingly, and is as follows, to wit:

Know all men by these presents, that we, Thomas Bodley, Robert Pogue, and Jos. C. Belt, are held and firmly bound unto John Threlkeld, Ann Threlkeld, John Proctor, Thos. Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Levi Thomas and Lorenda, his wife, late Lorenda *Thomas*, heirs of Jeremiah Proctor, deceased, in the sum of $300; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, &c., jointly and severally, firmly by these presents. Sealed and dated this 17th day of March, 1825.

The condition of the above obligation is such, that whereas the said Thos. Bodley and Robert Pogue commenced a suit in chancery in the Fleming circuit court against the said John Threlkeld, Ann Threlkeld, and the heirs of Jeremiah Proctor, deceased; and at the present March term of said court a decree was rendered therein against the said Bodley and Pogue; from said decree said Bodley and Pogue prayed and obtained an appeal to the court of appeals upon entering into bond, in the penalty aforesaid, with said Joseph C. Belt, their security, conditioned according to law. Now, if the said Bodley and Pogue, or either of them, shall well and truly prosecute the said appeal, and pay all damages and costs which may accrue to said John *Thrail*keld and others, in case said decree shall be affirmed, then this obligation to be void; else to remain in full force and virtue.

THOS. BODLEY, [SEAL.]
ROBT. POGUE, [SEAL.]
JOS. C. BELT. [SEAL.]

Attest: L. D. STOCKTON.

The exhibits and depositions filed and used as evidence upon the trial of this cause are as follows, to wit:

As editor of the Union, an authorized newspaper printed in Washington, Kentucky, I certify, that the annexed order of the Fleming circuit court, (to wit,) Bodley and others against Walden and others, was published in said paper eight weeks in succession, commencing on the 30th day of June, and ending on the 18th day of August, 1815.

DAVID V. RANNELLS.

The annexed order, referred to in the foregoing certificate, is an order of publication made at June term, 1815, (see page 26 for the order of publication.)

As editor of the Union, an authorized newspaper printed in Washington, Kentucky, I certify, that the annexed order of the Fleming circuit court was published in said newspaper for nine weeks in succession, commencing the 16th day of September, 1819.

DAVID V. RANNELLS.

The annexed order, referred to in the foregoing certificate, is an order of publication made at September term, 1819, (see page 44 for order of publication.)

In the name of God, amen. I, John Walden, of the county of Caroline, being in health, do make, constitute, and appoint this to be my last will and testament:

1st. I give and devise unto my wife, Sally, a piece of land, to be taken out of a tract whereon I now live, beginning above Thomas Crampton's, where Dixon's line crosses Bottle swamp; running thence along Dixon's line until it strikes the path leading from my house to Benjamin Munday's; thence along that path to the public road, until it comes to the mouth of a lane leading to my house; thence along that lane until it gets past a corn field lying northerly from the lane; thence leaving the lane, and turning towards Bottle swamps, so as to include that field, and to run one hundred yards eastwardly below its fence, until it strikes a small branch which heads in that field; thence down that branch to the main Bottle swamp; thence up the swamp to the beginning; upon which said land the office is to be removed and fitted up, or as good a house built for her use, at the expense of my estate and the discretion of my executors, to her, my said wife, for life, with the power of giving the same in fee, either by deed, will, or appointment, to or among any child or grand child, children or grand children, of mine, proceeding from my first marriage.

I also give to my said wife the three slaves, Ben, Hannah, and Lewis, four cows with calf, or four cows and calves, as she chooses, her choice of all my horses, four head of sheep, such as she may choose, a sow and pigs, half the fowls, her choice of a bed and furniture, two bed quilts, such as she may choose, twenty-five pounds worth of such articles of the estate as she may choose, at the appraised value, and one year's provision of corn, fodder, meat, and wheat, according to the discretion of my executors; all in absolute property. I also give to my said wife a negro girl, Charlotte, daughter [of] Jenny, for life, with the power of *disping* of her, similar to her power over the land, unless she shall have a child by me; in which case, I invest her with a power of giving the slave Charlotte, and her increase, to or among any child or grand child, children or grand children of mine, the fruit of my present marriage; but if my wife fails to make such disposition, then the said land, or the said Charlotte, with her increase, or both, of undisposed of according to her respective powers, shall, after my wife's death, go as the residue of my estate of their respective kinds, as herein after disposed of; which devises and bequests are made to my said wife in lieu of dower, and as a satisfaction for every claim she might by law have made upon my estate; but if any of the negroes given to my said wife should be recovered from her by law, my estate is to make good to her the value of them, her, or them, so lost.

2nd. I have made sundry advances to most of my children, of which I have made out an account, excluding trifling articles, and upon which I have charged some interest, in order to do justice among them; but I

have not charged full interest, nor continued it beyond the present year, since it opened unequally in favor of two youngest children. Having thus estimated upon equitable principles, in order to enable myself to do justice among my children, I have charged Ambrose with Molen and one bed and *and* furniture advanced him, amounting, with interest, to £74 50; John, with Betty and one bed and furniture, with interest, £66 5; William, with Peter and one bed and furniture, and interest, £68 15; Thomas, with Joe and interest, £44; Lucy, with Lydia, one bed and furniture, and interest, £80; Nancy, with Frank and Phyllis, and one bed and furniture, and interest, £62 10; Sally, with £50 cash, a bed and furniture, *ned* and her husband['s] bond for one thousand pounds of tobacco, (which bond I hereby give him,) and interest, £190 5; Rachel, with Judy, a bed and furniture, and interest, £66 5; Joanna, with 100 acres of land, Isabel, a bed and furniture, and interest, £190 1; and Betsey, with Kitt, a bed and furniture, and interest, £57 10. To my daughter Polly I have made no such advances. Averaging these sums by 11, each part is £81 16; which sum is exceeded in the advances to my daughter Sally to the amount of £108 9, and to my daughter Joanna to the amount of £108 5, which respective sums are to be paid out of the shares of my estate hereafter given to the children of my said daughters Sally and Joanna, in the following proportions, in order that the advances to each may be made equal. To my son Ambrose the sum of £7 11; to John's children £15 11; to the trustees of the daughter of William £13 1; to Thomas £37 16; to Lucy's trustee £1 16; to Nancy's trustees £19 6; to Rachel's trustees £15 11; to Betsey £24 6; and to Polly's trustees £81 16.

3d. I give to my daughter Polly a negro girl named Franky, upon the same terms upon which I shall presently give her a share of the residue of her estate. This negro girl I give her over and above a child's part.

4th. Out of my patented lands in the western country, I give four hundred acres each to my two sons, John and Thomas, and one hundred and thirty-three acres to my daughter Polly, to them and their heirs respectively. I also give four hundred acres of the same lands to the daughter of my son William, and her heirs, if she should attain the age of 21 years, or should have a living child; but if she dies before she arrives to the age of 21 years, and without a child living at the time of her death, I give the lands to my sons and their heirs, equally to be divided. If those lands should not measure to the exact amount, a surplus is to be divided among the same persons in the above proportions, and on the same terms, and a loss is to be deducted proportionably; also my son Ambrose has had his share of western lands already, but as he, for my account, engaged a person to locate this land for a portion thereof, which portion I have reserved in this devise, I give the residue of my western lands so reserved to my said son Ambrose, and his heirs, for the sole purpose of enabling him to comply with that engagement, and not for a benefit to himself.

4th. All the rest and residue of my estate I direct to be sold by my executors on twelve months; to the amount of which sales are to be added my debts and chattels of every kind, including in the former a debt due to me by my son-in-law George Walden, for moneys lent to him, and a bond due me from the estate of my son William; which bond is to be allotted as a part of his daughter's share, and this aggregate to be divided in the following manner: The product of the sale of the land whereon I live is to be divided into ten equal parts, three of which I devise to Ambrose, Thomas, and Betsey, each one absolutely; one other to such of the children of my son John as shall live to the age of 21 years, or to have a child absolutely, equally to be divided among them; one other part to my son-in-law George Walden, in trust, for the use of my daughter Nancy Puller during her life, and after her death to be by him conveyed to such person or persons as she shall, by writing under her hand, appoint, and, in default thereof, for the use of my residuary legatees of land money; one other part to my grandson John Harris, in trust, for the use of his mother Lucy Bowcock, to apply the profits or interests to her sole and separate use during her life, and, after her death, equally to be divided among her children, or their representatives, according to the rule of the act of distribution; one other part to the daughter of my daughter Sally Gayle, absolutely, equally to be divided among them; one other part to my sons-in-law, John Puller and George Walden, in trust, for my daughter Rachel Munday, to apply *to* the interests or profits to her sole and separate use during her life, and, after her death, equally to be divided among her children, or their representatives, absolutely, according to the rule of the act of distribution; one other part to the children of my daughter Joanna, absolutely, equally to be divided among them, and the remaining part to my said two sons-in-law, in trust, to apply the profits or interests for the use of my daughter Polly during her life, and, after her death, to go according to the rule of the act of distribution. And as to the money produced by the sale of the residue of my estate, and by my debts after debts paid, I direct it to be divided into eleven equal parts; ten parts of which I bequeath to the same persons respectively, upon the same terms, and for the same uses as the ten parts of the land money, *one* before devised, and the remaining eleventh part I bequeath to my said two sons-in-law, in trust, for the use of my son William's daughter, to pay the same to her, with its profits or interest, upon her coming of age or having a living child; but if neither of these events should happen, then in trust, to go in equal portions with, and according to the terms of, my other residuary estate in ten equal parts.

5th. But before the residuary shares given to the daughter of my daughter Sally, and to the children of my daughter Joanna, are paid, the surplus of the advancement before stated are to be out by my executors, and applied to equalize all the advancements as before stated; which said sums, so paid, are to go in trust, or absolutely, with the respective shares of my residuary estate, and to be subject to the same terms and conditions.

6th. Any trustee or trustees may purchase or not, of my estate for the use of the trust, as he or they may conceive to be most advisable; and my executors may assign my bonds due to my estate, or for sales thereof, in discharge of my several devises and bequests.

7th. If I should have any child or children hereafter to be born, my will is, that such child or children shall come in for an equal share of all my property, (the Kentucky or western lands, and the slave Franky given to Polly excepted,) with any of my children now living, upon the principles of this my will, even including the surplus of the advancements aforesaid, which, in that case, will be somewhat increased, as the slaves will be lessened.

8th. Lastly, I appoint Colonel Edmund Pendleton, jr., John Pendleton, jr., and John Taylor, executors of this my will. Executed this 29th day of August, 1793.

JOHN WALDEN. [L. S.]

Signed, sealed, and published by the said John Walden, as, and for, his said last will and testament, in our presence; and by his request, and in his presence, we have subscribed our names as witnesses thereto, on the 29th day of August, 1793.

Memo. The word fodder interlined before signing.

WILLIAM PEN,
THOMAS JOHNSON,
ANN TAYLOR,
LUCY TAYLOR.

A codicil to this my last will, made the 11th day of September, 1794.

Upon further consideration, I devise and bequeath the following alterations and additions to my will above written:

1st. In lieu of the land devised to my present wife Sally, I give and devise her a part whereon I live, beginning above Thomas Crampton's, where Dixon's line crosses North Bottle swamp, running thence along Dixon's line, until it strikes the path leading from my house to Benjamin Munday's; thence along that path to the public road, until it comes to the mouth of the lane leading to my house; thence along a path, being a near way to the house through the field, by a cherry tree in a bottom, to a persimmon tree on a rise; thence southerly, a straight line to the head of the branch where the old road to the house used to cross; thence down that branch, above the peach orchard, to South Bottle swamp, below Bank's mill, and keeping the same course one hundred yards beyond it; thence running parallel with the said swamp, one hundred yards southerly thereof, until it strikes Mr. John Pendleton's line; thence with his line, and the line of the Hon. Edmund Pendleton, up South Bottle, to the beginning; one moiety of which said land I devise to her for life, and the other moiety during her widowhood; I also give to my said wife Sally the cart, her choice of a pair of oxen, and the loom, with all its slays, harness, and other appurtenances. This devise is made in lieu of dower.

2nd. In lieu of the devise in the 7th clause in my will, having now another child born, I give and devise to my said youngest child, Edmund, one moiety of the land given to his mother on her second marriage, and the other at her death; and one-twelfth part of the residuary estate mentioned in the fourth clause of this my will, (the land money excepted, of which he is to have no part,) which said residuary estate, (that money excepted,) and the advancements are now to be settled according to the principles of my will, by twelve instead of 7, also a mare I had of John Harris, or if she should die before I do, any other horse to be selected by my executors; all which property I give to Edmund, in fee simple and absolutely, except in case he should die under age, and without a child living at the time of his death; the whole thereof in that event is to be divided among the residuary legatees, in the fourth clause mentioned, as if it had constituted a part of that residue. In the division of my estate, I direct that Edmund shall have a negro girl named Charity, at the value of £30.

3d. My son Ambrose having agreed to give one hundred and fifty acres of my Kentucky land to save the whole for ten years, I devise that the contract be fulfilled, and that for this purpose the devisees of that land do contribute in proportion out of their devises.

4th. My son Thomas is to be charged £10 for a bed and furniture given to him since the date of my will.

5th. I do not mean to revoke my bequest in favor of my wife contained in my will, (that relating to the land excepted,) which is indeed included in the land now devised to her.

JOHN WALDEN. [SEAL.]

Signed, sealed, and published by the said John Walden, as a codicil to his last will and testament, in our presence, and by his request, and in his presence we have subscribed our names as witnesses thereto, this 11th day of September, 1794.

JOHN NORMENT,
WILLIAM his ✕ mark. HUTCHINSON,
LEVI his ✕ mark. HUTCHINSON.

At a court held for Caroline county, at the court-house, on the 14th day of October, 1794, the will of John Walden, deceased, with the codicil annexed, was presented in court; the will was proved by the oath of Thomas Johnson and Ann Taylor, two of the witnesses thereto, and the codicil by the oath of William Hutchinson, a witness thereto, and admitted to record. John Pendleton, one of the executors therein named, came into court and removed his executorship; on motion of John Taylor, on his taking the oath and entering into bond, a certificate is granted him for obtaining probate thereof, and ordered to be recorded.

Teste: WM. NELSON.

A copy. Teste: JNO. L. PENDLETON, *C. C.*

VIRGINIA, *Caroline county, sct:*

I, John L. Pendleton, clerk of the court of the county aforesaid, do hereby certify, that the aforegoing is a copy of the will of John Walden, deceased, as fully and wholly as the same is contained upon the records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 25th day of November, in the year [SEAL.] 1822, and in the 47th of the commonwealth.

JOHN L. PENDLETON,
C. C. Car. county court.

VIRGINIA, *Caroline county, sct:*

I, Geo. Buckner, presiding magistrate in and for the county aforesaid, do hereby certify, that Jno. L. Pendleton, who hath signed the foregoing certificate, is clerk of the court of the county of Caroline, duly appointed and qualified, and that to all whose acts as such due faith and credit is and ought to be given, as well in courts of justice as thereout, and that the certificate aforesaid is in due form of law.

Given under my hand and seal, this 25th day of November, 1822.

GEO. BUCKNER. [SEAL.]

KENTUCKY, *ss:*

I, Achilles Sneed, clerk of the court of appeals, for the State aforesaid, do hereby certify, that the foregoing instrument of writing, purporting to be a copy of the last will and testament, and codicil to the will of *Geo.* Walden, deceased, was this day duly recorded in my office, together with the testimonials thereto annexed. In testimony whereof I have hereto set my name, this 20th day of February, one thousand eight hundred and twenty-three.

"ACHILLES SNEED."

Land office Treasury warrant, No. 2693. To the principal surveyor of any county within the Commonwealth of Virginia: This shall be your warrant to survey and lay off in one or more surveys, for John Walden, his heirs or assigns, the quantity of two thousand acres of land due unto the said Walden, in consideration of the sum of eight hundred pounds, current money, paid into the public treasury, the payment whereof to the treasurer hath been duly certified by the auditor of public accounts, and their certificate received into the land office.

Given under my hand and seal of the said office, on this 18th day of February, in the year 1780.

[SEAL.]

S. CARR, *D. R. L. O.*

I assign all my right and title of two thousand acres, the within land, to Ambrose Walden. In witness whereof I have hereunto set my hand and seal, this 2d February, 1780.

JOHN WALDEN. [SEAL.]

Teste: "MATTHEW GAYLE,
JOHN GAYLE,
JAMES LUTHER."

2771.

I assign 666⅔ of this warrant to Simon Kenton, his heirs, &c. May 22d, 1780.

AMBROSE WALDEN. [SEAL.]

Teste: GEO. MAY.
A copy. Teste:
JNO. M. FOSTER, *R. L. O.*
By JAS. Y. LOVE, *Dep. Reg.*

Land office Treasury warrant, No. 2706. To the principal surveyor of any county within the Commonweath of Virgina: This shall be your warrant to survey and lay off in one or more surveys, for John Walden, his heirs or assigns, the quantity of two thousand acres of land due unto the said Walden, in consideration of the sum of eight hundred pounds, current money, paid into the public treasury; the payment whereof to the said treasurer hath been duly certified by the auditors of public accounts, and their certificate received into the land office.

Given under my hand and the seal of the said office, on this eighteenth day of February, in the year one thousand seven hundred and eighty.

S. CARR, *D. R. L. O.*

I assign 334⅓ acres of this warrant to Simon Kenton, his heirs, &c. May 22d, 1780.

AMBROSE WALDEN. [SEAL.]

Teste: GEO. MAY.
A copy. Teste:
JNO. M. FOSTER, *R. L. O.*
By JAS. Y. LOVE, *Dep. Reg.*

22d May, 1780. Simon *Can*ton, assignee, &c., enters 1,000 acres upon Treasury warrants, on the north side of the North fork of Licking, on the lower side of a big branch, emptying in below the mouth of Limestone, on the west side, to extend up the branch one mile, and from thence west for quantity, including an improvement of Samuel Wells.

JNO. M. FOSTER, *Reg. L. O.*
A copy. Teste: JAS. Y. LOVE, *Dep. Reg.*

May 29th, 1780. Garret Bolin enters a pre-emption warrant of 1000 acres, on the North fork of Licking, about thirteen miles east of the Blue Licks, and about two miles east of the Buffalo road from the Blue Licks to cabin creek; beginning on the east line of Jacob Johnson's pre-emption, running east for quantity, and north down the North Fork.

A copy. Attest: THOS. BODLEY.

Upon the back of which entry is endorsed the following: "This copy of an entry, in the name of Garret Bowlin, may be used in the suit [of] Bodley and Pogue against Walden, and have the same effect as if legally certified as a copy.

REID, *Att'y for Deft's.*

February 21st, 1780. Peter Johnson, heirs, &c., enters 400 acres in Kentucky, by virtue of a certificate, &c., lying on the east side of

the Buffalo road leading from the Blue Licks to Limestone, nine miles from the Licks on the upper road.

A copy. Teste:

O. BELT, *Deputy*,
For JNO. M. FOSTER, *R. L. O.*

May 30th, 1783. Peter Johnson, heir at law of Jacob Johnson, deceased, enters 100 acres of land on pre-emption warrant No. 2346, on the waters of Licking creek, about ten miles from the Blue Licks, adjoining the said Johnson's settlement on the south and east, and on the north and west.

A copy. Teste:

A. W. WALLER, *D. C. C. A.*
For ACHILLES SNEED, *C. C. A.*

Nov. 29th, 1785. Surveyed for Ambrose Walden 1,333 acres of land, by virtue of an entry made 22d May, 1780, on a part of a Treasury warrant, No. 2,693, situate on the waters of Johnson's fork of Licking, adjoining Jacob Johnson's pre-emption, on the east side, bounded as follows, viz: Beginning on his N. E. corner at A, a buckeye and hoop ash trees; thence S. 68° E., 450 poles, to two red oaks and honey locust at B; thence S. 22° W., 473¾ poles, to an ash, Spanish oak, and mulberry and buckeye trees, standing on the bank of a small branch; thence N. 68° W., 450 poles, to a hickory, red oak, and white oak, the S. E. corner of Johnson's pre emption, and with a line of the same N. 22° E., 473¾ poles, to the first station.

WILLIAM HENRY, *D. S. F. C.*
THOS. MARSHALL, *S. F. C.*

WILLIAM BECKLEY, } *C. C.*
WILSON MADDOX, }
MASON OWEN, *Marker.*
SIMON KENTON, *Pilot.*

A copy.

RICH'D HIGGINS, *late S. F. C.*

FAYETTE COUNTY, *Dec'r 27th*, 1785.

Then surveyed for John Walden 1,666⅔ acres of land, agreeably to an entry made 22d May, 1780, on part of a Treasury warrant, No. 2,706, situate on the waters of Johnson's fork, adjoining Ambrose Walden's survey of 1,333 acres, on the S. E. side bounded as follows, to wit: Beginning at the southwest corner of said Walden's survey at A, a hickory, white oak, and red oak; thence S. 68° E., 450 poles, to an ash, Spanish oak, buckeye, and mulberry, at B, the southeast of Walden's, and with a line of the same N. 22° E., 164 poles, to two sugar trees and two white oaks in said Walden's line; thence 68° E., 284 poles, to a locust, white oak, and coffee trees; thence S. 22° W., 464 poles, to two Spanish oaks and a cherry tree; thence N. 68° W., 734 poles, to a hickory in a bend of Johnson's fork; thence N. 22° E., 300 poles, to the beginning.

WM. HENRY, *D. S. F. C.*
THOS. MARSHALL, *S. F. C.*

2172.

WM. MADDOX, }
WM. BECKLEY, } *C. C.*
MASON OWENS, *Marker.*

A copy. RICH'D HIGGINS, *late S. F. C.*

FAYETTE COUNTY, *January* 6, 1786.

Surveyed for Simon Kenton, assignee, &c., seven hundred and forty acres of land, part of an entry of 1,000 acres, made on part two Treasury warrants, Nos. 2,693 and 2,700, entered 22d May, 1780, situated, lying, and being on the north side of a big branch, emptying into the said North fork, southeastwardly from the mouth of Limestone, and bounded as follows, to wit:

Scale 200 po. per inch, variation 3° 50' east.

Beginning at A, a large white oak, two hackberries and buckeye, on the bank of said North fork at the mouth of said large branch, on the lower side; thence up the said branch on the west side, as it meanders N. 6 poles, S. 60° west 10 poles, N. 58° W. 6 poles, N. 13° W. 5 poles, N. 64° W. 8 poles, W. 15 poles, S. 75° W. 12 poles, S. 88° W. 12 poles, S. 80° W. 17 poles, N. 83° W. 15 poles, N. 31° W. 20 poles, N. 14° W. 22 po., N. 12 po., N. 20° W. 12 po., N. 20° E. 14 po., N. 17° W. 21 po., N. 35° W. 48 po., N. 30° W. 22 po., N. 5° W. 10 po., N. 58° E. 24 po., No. 75° E. 9 po., to B, a sugar tree on the west side of said branch; thence W. 170 poles to C, two white oaks and buckeye, in a line of a survey of 500 acres made for Edm'd Payne, with the same S. 150 poles to D, a buckeye and elm saplin, corner to said Payne, and with the same W. 280 poles to E, two hickories and white oak in said line; thence S. 208 poles to F, a hickory, white oak, hackberry, elm, and buckeye, on the bank of the North fork; thence up the same, with its meanders, N. 47° E. 45 poles, E. 24 po., S. 10° W. 45 po., S. 13° E. 40 po., S. 45° E. 9 po., N. 65° E. 27 po., N. 55° E. 70 poles, N. 70° E. 44 po., S. 80° E. 28 po., S. 48° E. 36 po., S. 17° E. 63 po., S. 63° E. 32 po., S. 75° E. 54 po., N. 83° E. 23 po., N. 20° W. 28 po., N. 32° W. 26 po., N. 40° W. 37 po., N. 15° W. 36 po., N. 9° E. 38 po., N. 45° E. 17 po., S. 78° E. 18 po., S. 45° E. 22 po., S. 38° E. 38 po., S. 70° E. 22 poles, N. 80° E. 31 po., S. 5° W. 19 po., N. 22° W. 32 po., N. 24° E. 26 po., N. 76° E. 16 po., N. 80° E. 112 po., N. 20° E. 14 po., N. 48° W. 15 po., N. 60° W. 18 po., N. 20 poles, N. 50° E. 24 po., N. 80° E. 8 poles, to the beginning, including an improvement made by Samuel Wells.

ARTHUR FOX, *D. S.*
THOS. MARSHALL, *S. F. C.*

SAMUEL STEELE, }
GEO. NASHBURN, } *C. C.*
CHRISTO'R WOODS, *Marker.*

A copy. Teste: JNO. M. FOSTER, *R. L. O.*

Articles of agreement made and done this first day of May, one thou-

sand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which the Ambrose Walden doth bind himself, his heirs, and assigns, to convey a proper deed of one-third of the said ten thousand acres so located, unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises under the penalty of fifty thousand pounds.

his
SIMON X KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered in presence of—
ANGUS CAMERON,
JOSEPH KAKITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig. Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLEVER CRAIG.

We assign to Lewis Craig the third part of 3,000 acres, entry in the name of Walden, and one-third of 3,000 acres, entry in the name of John Taylor, and one-third 15,000 acres in the name of William Nelson—John Craig's interest is only given up. Dec. 28th, 1793.

ROBERT JOHNSON,
Trustee to Jno Craig.
ELIJAH CRAIG,
Trustee to Jno. Craig.

UNITED STATES OF AMERICA,
7th circuit court, Kentucky district, sct:

I, John H. Hanna, clerk of the seventh circuit court of the United States in and for the Kentucky district, do hereby certify, that the aforegoing agreement, with the assignments thereon, is truly copied from the original in my office, filed in the suit, A. Walden against Lewis Craig, &c.

Given under my hand, this 10th day of September, 1809.

JOHN H. HANNA, *C. C. C. K. D.*

Upon which is endorsed the following, to wit:

"The foregoing agreement and assignments (except the last) are ad-

mitted as evidence of the originals, and of their actual existence; but the last assignment is devised, and full proof of it will be required."

JAMES A. PAXTON,
Atto. for Bodley & Pogue versus Walden et al.

This indenture, made this 26th day of April, in the year of our Lord 1791, between John Craig and Sarah, his wife, of the county of Woodford, of the one part, and Robert Johnson and Elijah Craig, of the other part, witnesseth: That whereas the said John Craig being seized and possessed of a very considerable estate, both real and personal, and being also indebted [in] large sums of money to divers persons, and being unable at this time, from misfortunes and other causes, to pay and satisfy the same, and being also from sickness and other infirmities, both of body and mind, unable to transact his business and manage his estate, and being willing to pay and satisfy his creditors their respective debts, and his estate, real and personal, being judged more than sufficient to answer that purpose, if properly managed and conducted; and the said Sarah being willing that all of the estate of the said John, except so much thereof as shall be necessary for her support and maintenance, shall be applied to the payment of said debts, and for that purpose hath agreed to part with all her interest and claim therein, except as is above excepted, so as to bar herself of all her right and title of dower of, in, and to the estate of the said John; and whereas the said Robert Johnson and Elijah Craig, at the instance of said John Craig, have consented to undertake the management of the estate of the said John Craig, for the purpose aforesaid: Now this indenture witnesseth, that the said John Craig and Sarah, his wife, for and in consideration of the purposes above mentioned, and also for and in consideration of the sum of five shillings to them by the said Robert Johnson and Elijah Craig in hand paid, the receipt whereof they do hereby acknowledge, and thereof acquit the said Robert Johnson and Elijah Craig, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Robert Johnson and Elijah Craig, and their heirs, and the survivors of them, and the heirs, executors, administrators, and assigns of such survivor, all the estate, both real and personal, of which the said John Craig is now possessed or entitled to in law or in equity, whether the same consists of lands, slaves, household and furniture, goods, chattels, debts, or other effects whatsoever, which are now due and belonging to the said John Craig, except the wearing apparel of the said John and Sarah, and except also the lands, slaves, and personal property mentioned and contained in an indenture bearing even date with these presents, made or mentioned to be made between the said John Craig and Sarah, his wife, of the one part, and the said Elijah Craig and Robert Johnson of the other part; which said land, slaves, and personal property so contained in the said indenture, are hereby declared to be excepted out of the estate of the said John Craig, hereby granted and sold to the said Robert Johnson and Elijah Craig, for and during the term created by the indenture, and no longer; and that, after

the expiration of the said term, the land, slaves, and personal property contained and mentioned in the said indenture, shall be vested in the said Robert Johnson and Elijah Craig, in as full and ample a manner as any other part of the estate of the said John Craig is hereby sold *and* to and vested in the said Robert Johnson and Elijah Craig.

To have and to hold all the said estate of the said John Craig, both real and personal, whether he be entitled to the same in law or in equity, except as is above excepted, to the said Robert Johnson and Elijah Craig, and their heirs, or the survivor of them, and to the heirs, executors, administrators, and assigns of such survivor; together with full power and authority from them, the said Robert Johnson and Elijah Craig, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, to commence any action or actions, or suits, for the recovery of any lands, slaves, debts, or other personal property due to the said John Craig, or withheld from him by any other person or persons, and the same to release and discharge; together also with full power and authority to sell and dispose of the whole, or any part of the estate of the said Jno. Craig hereby granted to the said Robert Johnson and Elijah Craig, and to settle any disputes which have arisen, or may hereafter arise, concerning any part of the said estate, either by arbitration or any other manner which they may *thing* best, to lay off and divide all the land which the said John Craig holds in partnership with any other persons whatsoever, provided that the above named Elijah Craig alone shall lay off and divide the lands which the said John Craig holds in partnership with the said Robert Johnson, to fulfil all the contracts of the said John Craig, and to execute all the deeds and conveyances which may be necessary for the complete enjoyment and execution of the estate and powers hereby granted by the said John Craig to the said Robert Johnson and Elijah Craig, as fully, amply, and effectually, to all intents and purposes whatever, as the said John Craig could or might do if personally present, or in case these presents had not been made; nevertheless, so far, and upon the several trusts, intents, and purposes hereafter mentioned and expressed, of and concerning the same, that is to say, upon trusts that the said Robert Johnson and Elijah Craig, or the survivor of them or the heirs, executors, administrators, or assigns, shall and do, as soon as can or may be by sales, absolutely sell and dispose of the said estate of the said John Craig, or so much thereof as shall be sufficient to satisfy the debts as aforesaid, and the expenses attending the execution of this trust; and after such sale or sales, upon this further trust, that they, the said Robert Johnson and Elijah Craig, shall well and truly apply the moneys arising from the said sales, after retaining and deducting so much thereof as shall be sufficient to reimburse them their reasonable expenses *inamed* in the execution of the trust, and to pay them a reasonable reward for their trouble in executing the same, to and among all the creditors of the said John Craig, as far as the same shall extend, to pay and satisfy their demands, according to the true intent and meaning of these presents; upon this further trust, that the said Robert Johnson,

or the survivors of them, shall, after having paid and satisfied all the debts now due by the said John Craig, *of* the said John Craig shall be then alive, reconveyed to the said John Craig so much of the said estate of the said John Craig as shall not have been applied to the purposes aforesaid, in as full and ample a manner as the said John Craig hath hereby conveyed the same to the said Robert Johnson and Elijah Craig; and if the said John should, before that time, have departed this life, that the said Robert Johnson and Elijah Craig shall convey so much of the said estate as shall then remain in their hands as aforesaid to such persons, and in such manner, as the said John Craig shall, by his last will, *shall* direct; and in case the said John Craig shall depart this life without having made such will, that then the said Robert Johnson and Elijah Craig shall convey so much of the said estate as shall remain in their hands as aforesaid to the above named Sarah Craig, and to John Hawkins, Elijah, Lewis, Sally, Benjamin, Francis, Nancy, Philip, and Polly Craig, and to their heirs, to be equally divided between them as tenants in common; and the said John Craig and Sarah, his , for themselves and their representatives, his executors and administrators, do covenant, promise, and agree, to and with the said Robert Johnson and Elijah Craig, their heirs, executors, administrators, and assigns, by these presents, that they, the said John Craig and Sarah, his wife, their heirs, executors, and administrators, shall and will, at any time hereafter, upon the request of the said Robert Johnson and Elijah Craig, or either of them, make, do, and execute all and every such other and further lawful acts, deeds, and things, as may be necessary, as well for the corroborating and strengthening of these *presence*, as also for the further, better, and more perfectly granting *granting*, assuming, and confirming of all and singular the estate hereinbefore mentioned and intended to be granted unto the said Robert Johnson and Elijah Craig, their heirs, executors, administrators, and assigns, provided that the said further deeds and assurances shall be made upon the several trusts, intents, and purposes hereinbefore mentioned, expressed, and declared, of and concerning the said estate.

In witness whereof the parties have hereunto set their hands and seals the day and year above written.

JOHN CRAIG, [SEAL.]
SARAH CRAIG, [SEAL.]
ROBERT JOHNSTON, [SEAL.]
ELIJAH CRAIG. [SEAL.]

Signed, sealed, and delivered, in the presence of—
JACOB MARTIN,
JOHN O'BANION,
JOHN H. CRAIG,
his
JAMES ✕ VALANDINGHAM,
mark.
JESSE PEAK.

JAMES HUGHES,
WILLIAM STEELE,
JAMES BOWDRY.

An inventory of the personal estate of John Craig, conveyed to Robert Johnson and Elijah Craig in a deed of trust bearing date the 26th of April, 1791, bearing the same date with this inventory, according to the best information obtained, twenty-seven slaves, to wit: James, James, Charles, Daniel, Harry, Edmund, Will, Dick, Warrick, Auror, Michael, David, Charles, Joseph, Judith, Sylvia, Fanny, Hannah, Rose, Suckey, Dickey, Richey, Rissy, Polly, Isbell, Ralph, Barnaby, four stills, thirty head of cattle, three horses, one wagon, sixty head of sheep.

ROBERT JOHNSTON.
ELIJAH CRAIG.

Witness:
JACOB MARTIN,
his
JOHN ✕ O'BANION,
mark.
JOHN H. CRAIG,
his
JAMES ✕ VALANDINGHAM,
mark.
SAMUEL TRACY,
J. HUGHES,
WM. STEELE,
JAS. BOWDRY.

The Commonwealth of Virginia, to John Watkins, William Steele, and John Fowler, of the county of Woodford, gentlemen, greeting:

Whereas John Craig and Sarah, his wife, by their certain indenture of bargain and sale, bearing date the 26th of April, in the year of our Lord one thousand seven hundred and ninety-one, here sold and conveyed to Robert Johnston and Elijah Craig the whole estate, both real and personal, of the said John Craig; which said real estate is situated within the district of Kentucky. And whereas the said Sarah cannot conveniently travel to our supreme court for the district of Kentucky to make acknowledgments of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Sarah Craig shall be willing to make before you of the conveyance aforesaid contained in the said indenture hereto annexed. And we do command you that you do personally go to the said Sarah Craig and receive her acknowledgment of the same, and examine her, privily and apart from the said John, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing that the same should be recorded in our said court; and when you have received her acknowledgment, and examined her as aforesaid, you distinctly and openly certify us

thereof in our said court, under your hands and seals, finding then there this writ.

Witness Christopher Greenup, clerk of our said court, at the courthouse, the 22d day of April, 1791, in the 15th year of the commonwealth.

CHRIS. GREENUP.

WOODFORD, *to wit:*

We do certify that we did, on the 27th day of April, 1791, personally attend on the within named, and received her *acknowledged* of the annexed deed [and] indenture, having first examined the said Sarah Craig privily and apart from the said John, her husband, and that she then and there declared that she had executed and acknowledged the said deed freely and voluntarily, without the persuasion or threats of her said husband, and that she is willing and desirous that the said deed shall be admitted to record in the supreme court for the district of Kentucky.

Given under our hands and seals the date above written.

JOHN WATKINS, [SEAL.]
WILLIAM STEELE. [SEAL.]

At a supreme court held for the district of Kentucky, the 19th day of June, 1791, this indenture, by way of a deed of trust, with an inventory annexed, was proved to be the act and deed of the within named John Craig, a party thereto, by the oaths of Jacob Martin, James Vallandingham, and *and* Jesse Peak, three of the witnesses thereto, and together with the commission for the privy examination of the within named Sarah Craig, another party thereto, with a return of the execution thereof thereon endorsed, was ordered to be recorded.

Teste: CHRISTOPHER GREENUP, *C. S. C.*

A copy.—Teste: A. G. BONDENANT, *D. C.*
For ACHILLES SNEED, *C. C. A.*

MASON COUNTY, *to wit:*

We, the commissioners, appointed by the worshipful the court of Mason [county] aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land, containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, *assignee of Craig*, assignee of Craig and Johnson, of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded on this day to the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north 22° east, with the old line, 155 poles, to two white ashes and sugar tree; thence north 61° west, 329 poles, to a walnut and two red oaks, Johnson's line; thence south 51°

west, with Johnson's line, 168 poles, to three white oaks, in John Walden's line; thence to the beginning, containing three hundred and twenty acres. To have and to hold the said quantity of three hundred and twenty acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, and in severalty, and no longer, subject to the claim of him, the said Walden. Also divided the said tract of land, as follows, to wit: Beginning at two white ashes and sugar tree, in John Walden's line, and corner to Lewis Craig; thence north 22° east, 375 poles, to a red oak and box elder, in Jacob Johnson's line; thence with said line south 39° east, 112 poles, to two buckeyes and white oak, east corner to said Johnson's; thence south 51° west, 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence south 61° east, 329 poles, to the beginning. To have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c., forever, in severalty and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever. And we, the said commissioners, do certify and declare, that the residue of the said survey in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division as the event of the interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, 1797.

This division of land between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: T. MARSHALL, JR., *C. M. C.*

A copy.—Attest: MARSHALL KEY,
Clerk Mason county court.

MASON COUNTY, *ss:*

January court, 1794.

Henry Lee, Arthur Fox, John Blanchard, Thomas Davis, David Morris, and Duvall Payne, are appointed commissioners in pursuance to an act of assembly for dividing lands between non-residents, tenants in common, and residents.

A copy.—Attest: MARSHALL KEY,
Clerk Mason county court.

Know all men by these presents, that I, Lewis Craig, of the county

of Mason, and State of Kentucky, am held and firmly bound, unto Daniel Threlkeld, of the county and State aforesaid, in the just and full sum of two hundred pounds, current money, to which payment I bind myself, heirs, &c.. this 27th day of March, 1798. The condition of the above obligation is such, that if the above bound Lewis Craig, or his heirs, shall well and truly make to the said Threlkeld a good and sufficient deed, in fee simple, to seventy-two acres of land, to include the place where the said Threlkeld now lives: Beginning at two box elders and elm; thence south 88° west, 92 poles, to a hickory, ash, and oak; thence north 2° west, 146 poles, to an ash and iron wood, in Walden's line; thence south 68° east, 101 poles, to two small hickories and elm; thence south 2° east, 105 poles, to the beginning, the deed to be made in six months, then the above obligation to be void, else to remain in full force and virtue in law.

Given under my hand the day and year above mentioned.

LEWIS CRAIG. [SEAL.]

Test:—D. V. PAYNE,
R. W. WARING,
JOHN NICHOLS.

Upon which is the following assignment, to wit:

For value received, I assign the within bond unto John Threlkeld, as witness my hand this 5th day of April, 1802.

DANIEL THRELKELD.

Test:—HENRY BRUCE,
LUCY THRELKELD.

This indenture, made this 9th day of July, in the year of our Lord one thousand seven hundred and ninety-eight, between Lewis Craig, of the county of Mason, and Commonwealth of Kentucky, of the one part, and John Threlkeld, of the county of Fleming, and State aforesaid, on the other, witnesseth: That the said Lewis Craig, for and in consideration of the sum of twenty-three pounds, current money of the United States, to him in hand paid, the receipt whereof he doth hereby acknowledge, and forever acquit and discharge the said John Threlkeld, his heirs, executors, and administrators, hath granted, bargained, sold, aliened, and confirmed, and by these [presents,] doth grant, bargain, sell, alien, and confirm, unto the said John Threlkeld, his heirs and assigns, forever, all that tract of land, lying and being in the county of Fleming, being a part of a tract of land purchased of the said Lewis Craig by James and Ann Threlkeld, containing two hundred and fifty acres, on the waters of the Flat fork of Licking, and to contain fifty acres, bounded as follows, to wit: Beginning at a small hickory, at the northwest corner of Ann Threlkeld's land, on the division line between *James* and Ann Threlkeld, and run south 70° east, 96 poles, to a buckeye standing near a small run near Daniel Threlkeld's fence; thence north 44 poles, to a black walnut and *sone* small sugar trees; thence north 70° west, 150 [poles,] to a blue ash and buckeye; thence south 20° west, 64 poles, to two sugar trees; thence south 70°

east, 64 poles, to a stake standing on the above mentioned division line; thence north 20° east, to the place of beginning; together with all improvements, water-courses, profits, and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversion, remainders, and profits thereof, and all the estate, title, and interest, property, claim, and demand, of him, the said Lewis Craig, of, in, and to the same. To have and to hold the land hereby conveyed, with all and singular the premises, and every part and parcel thereof, with every of the appurtenances, unto the said John Threlkeld, his heirs and assigns, forever, and to the only proper use and behoof of him, the said John Threlkeld, his heirs and assigns, forever; and the said Lewis Craig, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said John Threlkeld, his heirs and assigns, by these presents, that the premises before mentioned now are, and forever hereafter shall remain, free of and from all former gifts, grants, bargains, sales, dower rights, and titles of dower, judgments, executions, titles, troubles, charges, and incumbrances whatsoever, done or suffered to be done by him, the said Lewis Craig, of Mason county, State of Kentucky, and his heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said John Threlkeld, his heirs and assigns, against him, the said Lewis Craig and his heirs, and every other person or persons whatsoever, doth and will warrant and forever defend by these presents.

In testimony whereof I, the said Lewis Craig, do hereunto affix my hand [and] seal, the day and year above written.

LEWIS CRAIG. [SEAL.]

Signed, sealed, and delivered, in presence of—

Interlined before signing, 2d line from the top, and 5th from the bottom, and Mason put instead of Bourbon.

At a court continued and held for Fleming county, the 9th day of July, 1798, this indenture of bargain and sale, from Lewis Craig to John Threlkeld, was acknowledged by the said Lewis Craig, and ordered to be recorded.

Test: JOSHUA STOCKTON, *C. F. C.*

This indenture, [made] this twelfth day of January, in the year of our Lord one thousand eight hundred and one, between Lewis Craig, of the county of Mason, and Commonwealth of Kentucky, of the one part, and Ann Threlkeld, of the county of Fleming, and State aforesaid, of other, witnesseth: That the said Lewis Craig, for and in consideration of the sum of forty-six pounds, current money of the United States, to him in hand paid, the receipt whereof he doth hereby acknowledge, and forever acquit and discharge the said Anne Threlkeld, her heirs, executors, and administrators, hath granted, bargained, sold, aliened, and confirmed, and by these presents doth grant, bargain, sell, alien, and confirm, unto the said Anne Threlkeld, her heirs and assigns, forever, all that tract or parcel of land, lying and being in the county of Fleming, being a part of John Walden's survey, on the waters of the Flat fork of Johnston, and bounded as follows, viz:

2nd. In answer to second interrogatory this deponent saith, at the time alluded to above he lived with Daniel Runior, who lived at the mouth of the *buor* fork of the Flat fork of Johnson's fork of Licking, for the space of three months; during that time he was in the habit of looking around the land in the neighborhood, and viewing such curiosities as presented themselves to him.

3rd. In answer to third this deponent saith, that he recollects of passing down the Flat fork of Johnson as much as twice, once in company with David Runior; and that he passed down on the northwest side of the Flat fork of Johnson principally; and that, in passing down, he saw no appearance of improvements of any kind below the mouth of the Brier fork, except an improvement made by a man by the name of David Wade, at the mouth on the lower side of the Brier fork.

4th, 5th, and 6th. In reference to the fourth, fifth, and sixth interrogatories, this deponent saith he knows nothing.

7th. In answer to the seventh this deponent saith, that he never saw but three cabins, such as are called improvement cabins, all of which were within two miles of each other; and that he would not have known their use, if he [had] not have seen Simon Kenton point out one of them, lying on the waters of Mill creek, near the head waters of the Flat fork of Johnson, which was shown by said Kenton as Jacob Drennon's improvement; the others he saw, one on the Flat fork, between three-fourths and a mile above the mouth of the Briar fork, on the northwest side of the fork; the other stood about a quarter of a mile above the mouth of the Briar, between the two forks nearest to the Briar fork, between a sink hole and a buffalo or bear wallen waller. These cabins have the same appearance of that shown by Kenton and Drennon's improvement, except he thinks they were a little larger, and built of less durable timber, being more decayed. Drennon's improvement was built principally of blue ash poles, and these had some buckeye poles, which were considerably rotten, and some of them had fallen in; and further this deponent saith not.

JOHN WARRICK.

I, Levi Vaucamp, one of the justices of the peace in and for the county of Mason, in the State of Kentucky, duly commissioned and sworn, and acting as such by virtue of commission, being one of the judges of the county court in and for said county, do certify, that, at the request of the plaintiffs in said suit, I caused the deponents, Athelston Owens, John Ferguson, David Runion, Matthew Gray, Jasper Morris, William Allen, and John Warick, to come before me, at the time and place stated in the several captions; that I did not cause any notice to be given to the adverse party, because the witnesses aforesaid were only to depose in answer to certain interrogatories certified to me from said United States court, which are herewith enclosed and returned. The said witnesses were by me carefully examined, cautioned, and sworn, to testify the whole truth in answer to the interrogatories put to them respectively, that is to say: the said seven, in answer to (the three, four, or five) interrogatories put to him and myself; and said

Ferguson, Runion, Gray, Morris, Allen, and Warick, in answer to the seven interrogatories put to the said Ferguson, Morris, and others; the said deposition of said Owens was wholly reduced to writing by himself in my presence, and the depositions of all the other witnesses were wholly reduced to writing by me, in presence of each witness respectively, and then and there subscribed by each respectively in my presence; that the certified by the aforesaid Athelston Owens, who is county surveyor for the county of Mason, and herewith enclosed, is the same to which the witnesses, John Ferguson, David Runion, and Matthew Gray, referred in their depositions. And I do further certify, that I am not of counsel or attorney for the parties, [nor interested] in the event of the cause; all the witnesses testified they had no interest in the event of this suit; all which I do certify to said court, as the cause and manner whereof said depositions were taken.

LEVI VAUCAMP.

Deposition of Simon Kenton.

THE STATE OF OHIO, *Logan county, set:*

The deposition of Simon Kenton, of the State of Ohio, before me, Robert Smith, the undersigned, an associated judge of the court of common pleas, in and for the county of Logan, and State of Ohio, taken at my proper residence this 15th of April, 1826, between the hours of 10 A. M. and 4 P. M. of said day, to be read as evidence in a suit in chancery, now depending in the seventh circuit court of the United States of America, in and for the Kentucky district, wherein Thomas Bodley, Robert Pogue, Jonathan Rose, Benjamin Umpstead, and Robert Taylor, for himself, and on the behalf of the infant children of Robert Taylor and John D. Taylor, Eliza Sandridge, intermarried with Larkin A. Sandridge, late Eliza Drake, and William Drake, children of Remy Drake, deceased, and heirs at law of Abraham Drake, deceased, complainants, and Ambrose Walden, defendant.

The said deponent, being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he came to the State of Kentucky in the year 1771, and became acquainted with the lands on Licking in the year 1775; in that year became acquainted with the Blue Licks and Buffalo roads in that part of the country. This deponent was acquainted with Jacob Johnson, who was entitled to the settlement and pre-emption that was afterwards granted to his heir at law, Peter Johnson, by the commissioners in 1780. The said Jacob Johnson was lost or missing in the 1777, and was never seen or heard of since, so far as the deponent has ever known; and this deponent assisted in making the location and procuring the certificate for the settlement and pre-emption to which Jacob Johnson had entitled himself, and which was granted to his heir at law in 1780, and before that time the Lower Blue Licks was notorious and generally known by the name of the Blue Lick and Lower Blue Lick. The Buffalo road that lead from the Lower Blue Lick forked at the Battle ground, about a mile from the Lick, into three prongs; one run out on the waters of Indian creek,

and did not lead to Limestone; this was called the Lower road; the other two roads were called the Middle and Upper roads; and after crossing Johnson's fork, and the north fork of Licking, those two roads came together on Warren's branch, the waters of Lawrence's creek, and then lead on to Limestone; of those two roads the Upper road was much most travelled, and the largest and plainest road was the road on which Johnson's location was made from the Upper Blue Licks; there was no Buffalo road that lead to Limestone; Johnson's fork acquired its name in 1776, and generally was by that name, in that year, and ever since; it took its name from two men, Jacob and Andrew Johnson, who improved on its waters; and Jacob Johnson has obtained a settlement and pre-emption on account of said Jacob's being a resident, &c., which pre-emption, although granted to the heir of Jacob Johnson, was for a long time known as Jacob Johnson's settlement and pre-emption. This deponent states that the upper road from the Blue Lick, or Lower Blue Licks, as sometimes called, was notorious and generally known by the name of the Upper road, from the Blue Licks to Limestone, in 1780, and before that time; that when the location was made for Peter Johnson, heir at law to Jacob Johnson, the distance from the Blue Lick following the Buffalo road, it was in and about 9 miles to where the beginning of Johnson's entry was made; this deponent made the location and entry for Ambrose Walden, 1333 acres of land, and extended it to be on the east side of Jacob Johnson's settlement and pre-emption; this deponent assisted a surveyor employed by Col. Thomas Marshall to make some surveys on Johnson's fork which had to adjoin said Johnson's claim—this was in 1784. On this occasion this deponent directed and superintended the running said Johnson's settlement and pre-emption as it ought to have been surveyed according to its location in the opinion of this deponent, but the survey then made by his direction as aforesaid he believes was never returned or recorded; after this, he believes, in the fall 1785, the claim of Walden of 1333 acres was surveyed under the direction of this deponent, who was the locator for Walden's said claim, and he directed the survey for Walden so as to adjoin said Johnson's claim on the east side as he had directed Johnson's to be surveyed before in 1784, as above stated. Some time after said Walden's survey was made one Arthur Fox surveyed said Johnson's settlement and pre-emption by measuring from the Blue Licks, and cutting off some of the bends of the roads, and in that way making nine miles. He, this deponent, states that when he undertook for Ambrose Walden to locate his land he made a contract to have one-third for locating, but by the time this deponent had made the location said Walden had paid him in land warrants to his full satisfaction, and this deponent had no further claim for compensation of any kind. Some time afterwards this deponent sold his contract with Walden to Fox and Wood, but recollecting that Walden had paid this deponent for locating his land by land warrants which he had let him have, this deponent immediately went to Fox and Wood and procured them to take the land this deponent had located, with the warrants he

had obtained as above stated from said Walden; but this deponent neglected to take back the contract on Walden, so delivered to Fox and Wood, and they afterwards sold it to Craig and Johnson, and who may now hold it, or claim under it. This deponent does not know, but states, that Walden satisfied said contract to this deponent before he let Fox and Wood have it as above stated. This deponent showed the beginning corner of Walden's 1333 acre survey to Athelston Owens, the surveyor, who was making out surveys in suits in the United States, 7th circuit court, in and for the Kentucky district, in which suits Walden's lessee was plaintiff, and Nancy Tracy and others were defendants.

This deponent states he made Walden's said location of 1,333 acres, to include cabins on the north side of said Johnson's fork of Licking, built by Simon Butler; this deponent states that said cabins *was* built by himself; that when he built them he was called and known by the name of Simon Butler; and the said deponent had acquired that name, and was so known, at the date of said location for Ambrose Walden; and further this deponent saith not.

SIMON KENTON.

THE STATE OF OHIO, *Logan county, sct:*

I, Robert Smith, an associate judge of the court of common pleas, for the county of Logan, and State of Ohio, duly commissioned, sworn, and acting as such, do certify, that, at the request of the defendant in said suit, I caused the deponent, in the foregoing deposition, to come before me, at the time and place stated in the caption, because the witness resides more than 100 miles from Frankfort, the place of holding the said court *of the said court* of the United States, and is *antient;* that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at taking the same, because the said adverse party did not reside within one hundred miles of the place of taking the same, and had no agent or attorney known within that distance of the said place of caption; the said witness was by me carefully examined, cautioned, and sworn, then and there to testify the whole truth, the said deposition was wholly reduced to writing by me in presence of said witness then and there, and subscribed by him in my presence; that I am not counsel or attorney to either of the parties, or interested in the event of the cause; all of which I do certify to said court as the cause and manner wherefore the said deposition was taken. Given under my hand and seal, this 15th day of April.

ROBERT SMITH, *Associate judge.*

Deposition of Athelston Owens.

The deposition of Athelston Owens, before me, Levi Vaucamp, the undersigned, one of the justices of the peace in and for the Commonwealth of Kentucky, and county of Mason, being by virtue of my commission one of the judges of the county court, in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 21st day of October, in the year 1834, at the dwelling-house of Edwin

2143.

P. Pogue, in the county aforesaid, to be read as evidence in a certain suit depending in the court of the United States, in and for the seventh circuit and Kentucky district, holden in Frankfort, wherein Thomas Bodley's heirs and Robert Pogue's heirs are complainants, and Ambrose Walden, &c., are defendants, in chancery; said deponent being first duly affirmed and cautioned to depose the whole truth, doth depose and say, that he resides in the county of Mason; that he is aged 42 years; and further saith, in answer to the several interrogatories propounded to him by the complainants, that he, this deponent, was at the house of Major Walter Lacey at the time Simon Kenton's deposition was there taken in this suit, this deponent believes in the spring or summer of the year 1832.

This deponent, in answer to the second interrogatory, says, that the place which said Kenton represented to him as that at which the cabin was built is about ten or fifteen poles from the Flat fork of Johnson's fork, on the west or northwest side of the creek near an old milldam, and is referred to by this deponent on a copy of the connected plat first returned and filed in this suit, I believe by the letter (a).

To the third this deponent saith, that, not being much in the room where Kenton's deposition was taken whilst taking it, he has no recollection of said Kenton's expressing the doubts inquired of in this interrogatory.

To the fourth this deponent makes the same answer. And to the fifth this deponent says, that Robert Wickliffe, esq., wrote said Kenton's deposition. And further this deponent nothing.

ATHELSTON OWENS.

Deposition of John Ferguson.

Also the deposition of John Ferguson, at the same time and place, taken for the same purpose. Said deponent being duly sworn and cautioned deposeth and saith, that he is a resident of Fleming county, Kentucky; that he is aged 72 years next March, and saith, to the first interrogatory:

That he was conversant with the lands in controversy in this suit in the year '94, and ever since.

2d. And sayeth to the second interrogatory, that in the year 1794 he settled at Mayslick, and was in the habit of visiting his friend Mr. Daniel Runion, the father of David, who lived at the mouth of Brier fork, and that he occasionally hunted on the Flat fork; and in the year 1796 he was engaged in building a mill on the Flat fork, about a mile *d* and one quarter below the Brier fork; that he then cut a considerable quantity of timber, and became intimately acquainted with the lands in that neighborhood, from the head to the mouth of the North fork.

3d. And [to] the third interrogatory, he sayeth, that he never saw any ancient cabins or the remains of cabins or improvements on the north side of the Flat fork [of] Johnson's fork, below the mouth of Brier fork.

4th. In answer to the fourth, he sayeth, that he knoweth it well, and made the first improvement in company with Abraham Shockey

that was made then; and previous to that time, which was in the year 1796, there was no appearance or mark of an axe; and the first building he made was a pig pen, represented on the plat now lying before me by the letter B; a few days after he built a cabin for his family to live in, represented on the plat by the letter C; the next year he built a saw mill, about 20 poles below the cabins above named, the dam of which was about 1 or 2 rods above the pig pen, which stood about 6 rods from the ground shown by Simon Kenton as the ground on which the cabin stood, as represented to me by Athelston [Owens,] the survey, or marked on the plat now lying before me by the letter (a;) these improvements are 458 poles below the mouth of the Brier fork, which knows by carrying the chain and measuring on yesterday.

5th. Answer to the fifth interrogatory, he sayeth, that in the year 1794 he first became acquainted with the ground designated by Simon Kenton, as represented in this deponent's answer to the 4th interrogatory, and at the time there was no appearance of a cabin or improvement at the spot or near to it.

[6th.] In answer to the 6th, he sayeth, that from his acquaintance with the ground about that place, and below it on the creek, that if there were any cabins or improvements there, he would have discovered them; therefore he thinks there were none, for he was in the habit of noticing such things at that day, and would have recollected it if he had seen any.

7th. In answer to the seventh, he sayeth, that in the year 1794, he saw an old cabin on the northwest side of the Flat fork of Johnson, about three-fourths of a mile above the mouth of the Brier fork, as shown by this deponent and Matthew Gray on yesterday, and represented on the plat now lying before me by the letter (a;) and that the same year he was shown a cabin of ancient date, on or near the Brier fork, about half a mile from the mouth on the northwest side of said fork; this deponent saith, that from the appearance of the cabin above alluded to they had the appearance of cabins built for settlement rights, and not for dwellings, as there were no doors cut in them ; and further saith not

JOHN FERGERSON.

Deposition of David L. Runyon.

Also the deposition of David L. Runyon, at the same time and place, taken for the same purpose. Said deponent, being first duly sworn and cautioned to depose the whole truth, deposeth and saith, that he is a resident of Fleming county, Kentucky; that he is aged 55 years, and saith in answer to the first interrogatory that he became acquainted with lands in controversy in the year 1794 or earlier.

2d. In answer to the second interrogatory he saith, that at the time referred to above he was in the habit of hunting and driving up his father's cows, and passed almost every week from the head to the mouth of the Flat fork of Johnson; my father about that time settled at the mouth of the Brier fork.

3d. In answer to the 3d he saith, that he saw no cabin on either side of the Flat fork of Johnson below the mouth of the Brier fork prior to the year 1796, when John Ferguson made his first improvement.

4th. In answer to the fourth he sayeth, that, if it be the place pointed out by John Ferguson in his deposition near the old saw mill, this deponent knew it well as early as the year 1794, and at that time there was no appearance of a cabin or improvement at or near that place. John Ferguson and Abraham Shockey made the first improvement that was made on the Flat fork of Johnson, below the mouth of Brier fork, in the year 1796. A dwelling house and other buildings were built for John Ferguson, and the next year a saw mill was built for Shockey by said Ferguson.

5th. In answer to the 5th he sayeth, that if the place designated by Simon Kenton on which he says there was a cabin be [the] same marked on the plat now lying before me, marked by the letter (a,) near the old milldam, about a mile and a half below the mouth of Brier fork, there was no cabin or appearance of a cabin prior to the year 1794, or before the improvement made by Ferguson above alluded to.

6th. In answer to the 6th he sayeth, that from his acquaintance with the ground at or about that place, and below on the creek, he thinks there could not have been any improvement or cabin which could have escaped his acquaintance, as the cabins made for improvements, and standing at that were rather singular, having no door, and a few trees deadened around them, and were easily distinguished from dwelling-houses.

7th. In answer to the seventh he sayeth, that about the time of his first acquaintance with the country he saw a cabin on the N. W. side of the Flat fork of Johnson, about three-fourths of a mile above the mouth of the Brier fork, which was of ancient appearance; at that time it had the appearance of those cabins designated as improvements, having no door in it; and that he knew of no other cabin on the Flat fork, except one built by David Wood at the mouth of Brier fork, to live in, and he believes from the best information that the said Wood is now dead; and further this deponent sayeth not.

DAVID L. RUNYON.

Deposition of Matthew Gray.

Also the deposition of Matthew Gray, at the dwelling-house of said Gray, in the county of Mason aforesaid, (being aged and very infirm, and not able to attend at the place where the other witnesses deposed,) on the same day, 21st October, 1834, for the same purpose of the above deposition. This deponent, being first duly sworn and cautioned to depose the whole truth, deposeth, that he resides in said county of Mason, and further saith, that he is aged 79 years this month; and in answer to the first interrogatory he sayeth, that he became acquainted with the lands in controversy in the year 1794.

2nd. In answer to the second interrogatory he saith, that at the time referred to above he was in the habit of hunting up and down

the Flat fork of Johnson, and lived near the head waters of said creek from that time to this, and has since that been intimately the lands in controversy.

3d. In answer to the third he saith, that he don't now recollect that ever saw any ancient cabins or improvements below the mouth of Brier fork of the Flat fork of Johnson.

4th. In answer to the fourth he sayeth that he knows nothing.

5th. In answer to the fifth he sayeth that he knows nothing.

6th. In answer to the 6th he sayeth that he knows nothing.

7th. In answer to the seventh he sayeth, that on yesterday he met with John Ferguson on the Flat fork of Johnson, he supposes about three-fourths of a mile above the mouth of the Brier fork, where he distinctly recollects to have seen a cabin or improvement of apparent ancient date on the N. W. side of said fork; and he also recollects, that about three-quarters of a mile above that, on the same branch, there was another ancient looking cabin on the same side of the creek; the cabins alluded to, he says, were such as was at that time recognised as cabins made for ancient improvements, have no doors cut in them, and almost rotten at the time he first knew them; and he also states, the cabins alluded to were in the same neighborhood where Jacob Drennon's improvements were made, under which this deponent settled and now lives; and further this deponent saith not.

MATTHEW GRAY.

Deposition of Jasper Morris.

Also the deposition of Jasper S. Morris, taken at the house of Asa R. Runyon, in the county of Mason aforesaid, on the 22d of October, 1834, for the same purposes of the above depositions. This deponent, being first duly sworn and cautioned to depose the whole truth, deposeth and saith: That he resides in said county of Mason, and further saith, that he is aged near 46 years; and in answer to first interrogatory, deposeth and saith, in answer to the first interrogatory: I was acquainted with the land in controversy as early as the year 1800, and the lands adjoining.

In answer to the second interrogatory: In the year 1800 I went to school to a school-house standing on the west side of the Brier fork, about a half a mile from the mouth of said fork; and a short distance from said school-house there then stood a pole cabin, similar to those called improvement cabins, which cabin was beginning to fall down, and had the appearance of having been built some years. After the 3d, 4th, 5th, and 6th interrogatories, I know nothing. The 7th interrogatory, so far [as] I know, is answered in the 2nd; further this deponent saith not.

J. S. MORRIS.

Deposition of Wm. Allen.

Also the deposition of Wm. Allen, at the same time and place with the last taken, for the same purpose of the above depositions. This deponent, being first duly sworn and cautioned to depose the whole

truth, deposeth: That he resides in the county of Mason, and further saith, that he is aged 77 years next February; and in answer to the first interrogatory he sayeth, that he became acquainted with the lands in controversy in March, 1795.

In answer to second this deponent saith: That at the time alluded to above he settled on the waters of the Brier fork of the Flat fork of Johnson, and the lands he bought lay adjoining Jacob Johnson's settlement and pre-emption, which caused him more particularly to examine the situation of the claims.

In answer to the third, fourth, fifth, and sixth interrogatories, this deponent states he knows nothing.

7th. In answer to the 7th interrogatory this deponent saith: That about a quarter of a mile above the mouth of the Briar fork of the Flat fork of Johnson, between the forks, rather nearer the Briar fork, he saw as early as the year 1795 a cabin, which had the appearance of improvement cabins; this deponent saith that he was not in the habit of hunting, only for the purpose of driving up his sheep.

WILLIAM ALLEN.

MASON COUNTY, *ss:*

THOS. BODLEY'S and Robert Pogue's heirs, complainants,
vs.
[illegible] WALDEN et al., defendants.

In ch[illegible]ne 7th circuit court, U. S., for the district Kentucky.

[illegible]equest of the complainants I have, this 20th day of October, 1[illegible]4, laid down in connection the above surveys of land in controversy herein, which connection is explained by the following notes:

Notes.

1, 2, 3, 4, represent Jacob Johnson's settlement survey of 400 acres, laid down according to the interlocutory decree herein.

5, 6, 7, 8, Jacob Johnson's pre-emption of 1,000 acres, lying about the settlement survey according to decree.

9, 9, 9, 9, Walden's survey of 1,333⅓ acres, laid down agreeably to said decree in a square, based upon the S. E. side line of the settlement.

10, 10, 10, 10, Walden's survey as actually surveyed originally.

6, 7, 11, 12, Walden's survey, laid down at the request of the complainants, based upon the N. E. side line of Jacob Johnson's pre-emption.

a. The place shown by Simon Kenton, where the cabin referred to in his deposition taken herein stood.

b. The place shown by John Ferguson, where he built a pig-pen or sty in the year 1796.

c. The place at which said Ferguson built a cabin in the year 1796, as shown by himself.

d. The place shown by said Ferguson and Matthew Gray, where a cabin once stood, say 40 years ago.

The Flat fork of Johnson's fork, and the Brier fork of the Flat fork, are designated on the face of the plat.

ATHELSTON OWENS,
Surveyor of Mason county.

Duncan vs. *Walden—co. record.*

Be it remembered, that heretofore, to wit, on the 26th day of January, in the year 1827, came David Duncan unto the clerk's office of the 7th circuit court of the United States in and for the Kentucky district, and filed the following bill against Ambrose Walden, to wit:

To the honorable the court of the United States for the 7th circuit and Kentucky district, in chancery sitting:

David Duncan complaining, showeth, that a certain Peter Johnson, heir of Jacob Johnson, on the 7th day of January, 1780, obtained from the court of commissioners duly authorized to grant the same, a certificate for a settlement of 400 acres of land on the E. side of the Buffalo road leading from the Blue Lick to Limestone, nine miles from the Lick on the upper road, by the decedent's raising corn, &c., and a pre-emption of 1,000 adjoining.

That on the 21st day of February, 1780, he made an entry with the proper surveyor for 400 acres, being the settlement right aforesaid in substance with his certificate.

And on the 30th day of May, 1783, he also made an entry on the pre-emption, having previously obtained a warrant therefor, adjoining his settlement on the S. and E., and on the N. and W. sides.

That the entries aforesaid both contained all the specialty in such cases required by law, and being surveyed in strict conformity to their terms and true construction, a grant issued for the settlement on the day of , 17 , and for the pre-emption on the day of , 17 , to a certain

Your orator would further state, that on the 31st day of July, 1783, an entry was made with the proper surveyor in the name of John Tibbs and others, for 20,000 acres of land, in virtue of Treasury warrants, beginning at a large black ash and small buckeye, marked thus, I. T., on the side of the Buffalo road leading from the Lower Blue Licks, a N. E. corner, and about 7 miles N. E. by E. from the said Blue Licks; running thence due north, 1,264 poles; thence S. 1,264 poles; thence W. $2,529\frac{8}{10}$.

And on the 17th day of October, 1783, another entry was made with the proper surveyor in the name of John Tibbs and Henry Crutcher, in virtue of Treasury warrants, for 10,000 acres of land, beginning at a black ash and small buckeye, marked thus, I. T., on the side of the Buffalo road leading from the Lower Blue Lick, a N. E. corner, and about 7 miles N. E. by E. from the said Blue Licks, a corner of an entry of 20,000 acres, made in the name of John Tibbs, John Clarke, John Sharpe, David Blanchard, and Alexander McLean;

running thence with a line of the said Tibbs, &c., due east, 1,600 poles; thence south, 1,000 poles; thence west, 1,600 poles; thence north, 1,000 poles, to the beginning.

That both of those entries were certain, and so special that all others might be able with safety to appropriate the adjacent residue; and being surveyed in strict conformity to their terms, a patent was regularly obtained upon the former by Thomas Bodley, the purchaser thereof, on the day of , 18 , and by a certain Robert Rutherford, as assignee of Crutcher, and a certain Willoughby, heir at law of John Tibbs, a grant was obtained upon the latter entry and survey on the 26th day of August, 1790; all of which will more fully appear by reference to the several entries and patents, copies whereof are filed herewith, and referred to as parts of this bill.

That your orator, on the day of , purchased from Arthur Fox, the grantee named as aforesaid, in the patents founded on the settlement and pre-emption aforesaid, in the name of Johnson, 200 acres, a part in the settlement and a part in the pre-emption, and on the day , 1795, settled and improved the same, and has continued to reside thereon ever since, until evicted by process from your honorable court as hereafter set forth; and being threatened by a suit upon the claims of Tibbs and others, for 20,000 acres as aforesaid, and 10,000 acres, and apprehending that those claims would prevail, he, on the day of , 18 , made a compromise with Bodley, who he understands has acquired the right in both those claims, conveying to him 36 acres of his said tract, and Bodley made a deed to him for the balance, amounting [to] 179 acres and some poles as your orator believes, for his original purchase contained a surplus. Thus your orator believes he has acquired a perfect investiture of all right conferred by either of the entries and surveys aforesaid to the said tract of 179 acres, all of which he believes covers some portion of it; he trusts he will be able to exhibit in due time full evidences of the purchases and compromise aforesaid, but has not them at present to file. Your orator had consequently hoped he would be permitted to enjoy the lands so purchased and improved, but a certain Ambrose Walden, a citizen of the State of Virginia, and who is made defendant of this bill, combining, &c., has surreptitiously and improperly obtained a patent of elder date than those under which your orator claims for upwards of 1300 acres, including the tract of your orator, under pretence of an entry which your orator charges to be vague, and a survey improperly and illegally made, and under color thereof prosecuted to judgment an action of ejectment on the common law side of your honorable court, against your orator and others; but the demise having expired, and the tribunals of our country having that it could not be extended, and your orator understanding that nothing further could be done in pursuance of the judgment, he deemed it unnecessary to file a bill, or take any measure to protect his possession, and so it remained for years; at length, however, without any intimation to your orator that more was designed, and whilst he believed himself perfectly secure, the common law court, as he is informed

and believes, enlarged the demise and authorized a writ of possession against your orator; it is at least certain that to the utter surprise and extreme perplexity of your orator, the agent of the defendant and the marshal of your court, in the month of January, 1836, called on your orator, prepared to dispossess him, and at that inclement season of the year would, as they declared, and as your orator believes, have evicted him from the land which he considers his own in equity, and the improvements which he certainly made, and are of considerable value, and for which he has received no compensation or indemnity, unless your orator would consent to become the tenant of the defendant, and undertake to pay him rent; accordingly your orator, therefore, ignorant as to his redress, and without the opportunity of competent advice, submitted to the terms proposed him *him*, and excepted a lease for one year, at one dollar and fifty cents per acre for the cultivated land, amounting to about 80 acres, and the term having expired, your orator has reason to apprehend, and does really fear, that he will be required to pay the rent and surrender the premises unless protected by the interposition of your honors; all which actings, &c., are contrary to equity, &c., &c. In tender consideration whereof, &c., &c. To the end, therefore, that the defendant may true and perfect answer make to all and singular the premises aforesaid, more especially that he may set forth and show if he has in equity any claim to the premises, &c.

Your orator prays your honors, by your decree to compel the defendant to him his title so improperly acquired to the land of your orator, that if this be impossible, you will require that he be compensated for his improvements, &c., and that you will grant him such other and further relief as his case may require, &c. May it please your honors to grant your orator your writ of spa. restraining and enjoining a collection of the rent, or a dispossession of the premises until the matters of this bill be heard, &c., &c. JA. HAGGIN.

FRANKLIN COUNTY, *sct:*

This day Joseph Duncan made oath before me, a justice of peace for the county aforesaid, that he is the agent of David Duncan, the complainant, and has been conversant with the matters in the within bill; that he believes the facts therein stated are true as set forth.

Given under my hand this 23d day of January, 1827.

H. WINGATE, *J. P.*
Clerk of the circuit court of the United States,
for the 7th circuit and district of Kentucky.

Let a subpœna with injunction issue, agreeable to the prayer of the within bill, on the plaintiff entering into bond with Thomas Clarke, of Mason county, his security in the penalty of $1000.

Given under my hand this 25th of January, 1827.

JOHN BOGLE, *D. J.*

Spa. in chancery, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

2147

You are hereby commanded to summon Ambrose Walden to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the Capitol, in Frankfort, on the 1st Monday in May next, to answer a bill in chancery exhibited against him by David Duncan; and this he shall in no wise omit, under the penalty of $400, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 26th day of January, 1827, and of our independence the fifty-first.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The defendant is hereby restrained and enjoined from further proceedings on a judgment obtained in the district court of the United States, in and for the Kentucky district, for a certain tract of land in Mason county, so far as it includes the said David Duncan, until the matter can be heard in equity.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return, to wit: The defendant not found, and he is not an inhabitant of this district; and I have served this writ on Edward Blackburn, said defendant's agent, 1st February, 1827.

CHAPMAN COLEMAN, *M. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, and year 1827, it being suggested to the court that the complainant has departed this life, it is therefore ordered that this suit do abate; and, on the motion of the heirs of said decedent, leave is given them to file a bill of revivor, which is done accordingly; and said suit stands revived; which bill of revivor is as follows, to wit:

To the honorable the judges of the United States court for the seventh circuit, and district of Kentucky, in chancery sitting:

John Patton and Nancy, his wife, Thomas Patton and Amanda, his wife, Henderson Duncan, Alfred Duncan, Mitchell Duncan, William Duncan, Jane Duncan, James Campbell and Mary, his wife, James Lindsey and Nancy, his wife, Martha Duncan, Benjamin Duncan, Joseph Duncan, Elizabeth Duncan, and Jane Duncan, respectfully show, that on the day of , 1827, a certain Duncan filed his bill in your honorable court against , setting forth his claim and title in equity to a certain tract of land in the county of Mason, showing that the defendants had obtained a judgment in law for the recovery thereof in an action of ejectment, and was about to dispossess him, the said Duncan, and praying, among other things, an injunction, &c., &c.; all of which will more fully appear by reference to the said bill. Your complainants would further state, that the said Duncan hath since departed this life, first making and publishing his last will and testament, devising the said tract of land to the complainants. They therefore pray that the said suit be revived in their names, and that your honor will grant to

them such relief as prayed by their original bill, and as their case may require, &c.

Clarke's heirs vs. Walden.—Co. record.

Be it remembered, that heretofore, to wit, on the 12th day of May, in the year 1826, came Benjamin Clarke's heirs, by their attorney, into the office of the seventh circuit court of the United States of America, in and for the Kentucky district, and filed the following bill in chancery against Ambrose Walden, to wit:

To the honorable the judges of the circuit court for the United States, for the seventh circuit, and Kentucky district, in chancery sitting:

Your complainants, Judith Lacey, Susan Lacey, Mary Lacey, Thomas Lacey, Charles Lacey, Walter Lacey, and Daniel Lacey, heirs at law of Elizabeth Lacey, deceased, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, deceased, all of whom are infants under 21 years of age, who sue by their father, guardian, and next friend, Walter Lacey; and Daniel Clarke, Susan Sumrall and her husband, Joseph K. Sumrall, the said Susan being formerly Susan Clarke, daughter and one of the heirs of said Benjamin Clarke, deceased, Thomas Clarke, Mary H. McMillan, daughter and heir of Mary McMillan, deceased, who was formerly Mary Clarke, daughter and one of the heirs of Benjamin Clarke, said Mary H. McMillan being an infant under 21 years of age, who sues by her father, guardian, and next friend, Andrew F. McMillan, and Virginia Clarke, the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, deceased, and the said Walter Lacey and A. F. McMillan, aforesaid, (all citizens of the State of Kentucky,) show unto the court that, on the 7th day of January, 1780, Peter Johnson obtained from the commissioners a certificate of settlement and pre-emption, as heir at law to Jacob Johnson, deceased, to a tract of land in the district of Kentucky, herewith exhibited as a part of this bill, marked (A;) that said Johnson entered his said settlement of 400 acres with the surveyor, as appears by a copy thereof herewith exhibited, marked (B;) and on the thirtieth of May, 1783, the said Johnson entered the pre-emption thereto appendant, in the manner described by a copy of said entry herewith exhibited, marked (C;) that said settlement and pre-emption were duly surveyed according to law and the said locations; and thereupon grants issued to John Reed and Arthur Fox, the assignees of said Johnson, which surveys bear date, viz: The survey of the settlement, on the 9th April, 1789, and of the pre-emption, three several surveys, bearing date the 10th April, 1789, the grants all bearing date the 20th February, 1793; which more at *a* large appears by said grants herewith exhibited, marked D, E, F, G.

Your complainants aver, that the locations and descriptions in said certificate and entries of the settlement and pre-emption were special and precise; that the objects of location used in said entries were notorious at their respective dates, and might have been found by others, by reasonable diligence of inquiry, so as to have enabled others to appro-

priate the adjacent residuum; that said surveys were conformable to said entries, and the grants issued thereon were legal, and in pursuance of the requisitions of law, so that the said claims of the settlement and pre-emption, in their beginning, progress, and consummation, were legal and valid claims.

Your orators state, a division of said 1,400 acres of land has been made between the interests of the said copatentees, Reed and Fox, so that their interest, which first was joint, or as tenants in common, has been severed and held in severalty by metes and bounds; that in the year 1789 the said Benjamin Clarke (the ancestor of your complainants, as hereinbefore specified,) purchased of said John Reed his part of the said entries, and received from said Reed an obligation to convey the same to him, the said Clarke, which bond was afterwards substantially complied with by a deed executed by the heirs of the said John Reed after his death, bearing date on the 1st day of August, 1815, and duly recorded in the county of Mason, where the land lies, and which deed is herewith exhibited as part of this bill, marked (M.)

The bond aforesaid was, upon the execution of said deed, delivered to Anthony F. Reed, so that it cannot now be exhibited; but the proof of execution will, in due time, be made.

Your orators state, that at the time of the purchase aforesaid, made by said Benjamin Clarke of said Reed, said Benjamin lived in Virginia; but afterwards, in the year 1799, said Benjamin removed from Virginia, and settled on his said half of said 1,400 acres, and he and his family lived there until his death, and his heirs still continued to reside on it after his death, until dispossessed of a part of the said tract, by the process of this honorable court, in the manner hereinafter stated.

Your orators further show, that on the 31st day of July, 1783, John Tibbs, John Clarke, and others, made an entry for 20,000 acres of land in the said district of Kentucky, on Treasury warrants, as appears more fully by an attested copy of said entry herewith exhibited, marked (H,) as a part of this their bill; that on said entry a survey of 16,000 acres was made on the 8th day of June, 1796, and therefore a grant regularly issued to Thomas Bodley, as assignee, as will more at large appear by an attested copy of said grant herewith exhibited, marked (I.)

Your orators aver, that the said entry of Tibbs, &c., was and is special and precise, good and valid; that the objects alluded to in said entry were, before and at its date, notorious to the generality of persons acquainted in that part of the country; that the precise locality of said land so entered might have been found by others using due diligence of inquiry, so as to enable the holders of other warrants or claims to locate the adjacent residuum; that this entry has, in various suits in the State courts, and in the Supreme Court of the United States, been sustained and adjudicated as special and precise, legal and valid, in so much so that the notoriety of the objects of location and description used in said entry as existing, at and before its date, has, by reputation, and the adjudication thereon, been so generally diffused, that Ambrose Walden himself, the defendant hereinafter named, has personal knowledge of

the notoriety which attached and belonged to said objects of description employed in said entry, and well knows, from information and reputation, that such notoriety did exist at the date of said entry. They aver, moreover, that the survey of 16,000 aforesaid, made by virtue of said entry, was and is in strict conformity to said entry and to law, and the grant thereon to Bodley regularly and legally issued to him as assignee, according to the rules and regulations of the land office, so that the said entry, survey, and grants constitute a legal, special, precise, and valid claim in law and equity.

They state that said 16,000 acres, so as aforesaid granted to said Bodley, covered and swallowed the whole of the said tracts of land so as aforesaid patented to Reed and Fox, by virtue of said Johnson's settlement and pre-emption; and said Benjamin Clarke, finding the whole of his tract, and farm, and dwelling, and appurtenances, covered by said patents to Bodley, in the year 1805 purchased of said Bodley so much of said grant founded on the entry of Tibbs, &c., as covered the said half of Johnson's settlement and pre-emption, so owned and possessed by said Benjamin, and obtained from said Bodley deeds therefor, which are herewith exhibited as part of this bill, marked (K and L.)

Your complainants state that, on the 22d day of May, 1782, one Ambrose Walden caused to be made in his name an entry of 1333 acres upon a Treasury warrant, "on the east side of Jacob Johnson's settlement and pre-emption on the waters of Johnson's fork, &c.," as by an attested copy thereof herewith exhibited more fully appears.

Your orators allege that said entry of Walden was and is vague, uncertain, and invalid, and illegal; that an illegal survey has been executed under color of said entry; and supposing the said entry could be supported as valid, which they by no means admit, yet the said survey is variant from said entry, and therefore illegal, as well because of the insufficiency and uncertainty of said entry, as because of the departure of the said survey from the entry; by virtue of which said entry, so fraudulently and improperly made, the said Ambrose Walden obtained illegally and fraudulently a grant elder in date than the grants aforesaid to Reed and Fox and to Bodley.

Your orators state that by virtue of said elder grant the said Ambrose Walden caused declarations in ejectment to be served in February, 1797, *and* Thomas Langley and Joshua Mannin, who were then tenants in possession, as your orators are informed, of the part of the land so as aforesaid purchased by said Benjamin Clarke of said Reed; in July, 1798, a judgment in ejectment was had by confession, with reservation of equity, as by the records of said cases in ejectment, remaining of record in this honorable court, and of the records of the district court of Kentucky, then exercising the power and jurisdiction of a circuit court of the United States, more at large appear, to which your orators refer as part of this their bill; after said confession of judgment, the heirs of said John Reed and of said *Anthony* Fox, their next friend, exhibited their bill in equity against said Walden, with an injunction against the judgment at law aforesaid, setting up the settlement and

pre-emption of Peter Johnson aforesaid, as the superior claim and of greater dignity in law and equity to that of Walden; and the case in chancery was continued on the rule docket until November, 1825, when it was dismissed for want of replication to the answer of Walden, as by reference to the said bill, answer, and proceedings, and records of this honorable court, will at large appear, to which your orator begs leave to refer as part of this bill.

They state that, after said dismission for want of replication, the said Walden applied for and obtained leave to extend the demise which had expired, and upon that judgment in ejectment a writ of possession issued, to which they refer as part of this their bill; and George Taylor and Gabriel Pritchett, who were then tenants holding under your orators, and rendering rent to your orators, were turned out of possession by said Walden under said judgment and writ of possession, and said Walden now has possession of that part of your orators' tract so as aforesaid purchased of Reed and Bodley, so far as said Walden's survey interferes with it, which is about 340 acres, more or less; and the said tenements so taken from your orators, were part of the tract of 700 acres on which your orator's ancestor in his lifetime, and his heirs since his death, have lived, and yet live; the first dwelling of their said ancestor was within the interference with Walden's survey, but after some few years said Benjamin built another house on said 700 acres, but outside of Walden's survey, but he continued ever after to possess, occupy, and cultivate, and cleared land and improvements, which were within said interference by himself or by his tenants in his lifetime, and so have his heirs since his death, until dispossessed as aforesaid by the writ of possession from this honorable court.

Your orators aver, that at the time when their ancestor took possession as aforesaid he was wholly ignorant of the ejectment or of the pendency of said suit in chancery; that he remained so during his life, and your complainants were ignorant of those proceedings until the writ of possession aforesaid came and dispossessed them. Your orators show that the said suit in chancery was in the name of Reed's heirs, who had only a nominal interest, and all of whom were infants when the said bill was filed, and of Fox's heirs who were also infants; that said heirs were ignorant of the suit; the lawyer who was employed as counsel for the complainants, Joseph H. Daviess, esq., was killed in the battle of Tippecanoe, and thus the suit slumbered on the rule docket without prosecution or defence until dismissed for want of replication aforesaid.

Your orators had well hoped that said Walden or his agent, upon being informed of these circumstances, would not have dispossessed your orators until the matter could be heard in equity, but he has executed said writs of possession, and is enjoying the rents and profits of your orators' lands and improvements, by leasing out the same upon yearly rent, and refuses to restore your orators to possession, &c.; all which actings and doings were against equity, &c.; in tender consideration whereof, and forasmuch as your orators are only to be relieved in

equity, where elder legal titles obtained by fraud are made to yield to prior equities, &c., &c.

To the end, therefore, that said Ambrose Walden may be made a defendant hereto, that he may answer all the matters hereof as fully as if repeated by interrogatories, that he may say if he is not in possession of part of the cleared land, buildings, and improvements made by said Benjamin, if he is not in possession of the tenements which were occupied by George Taylor and Benjamin Pritchett; that said Walden may be compelled to release his elder legal title to the interference with said Johnson's settlement and pre-emption, and said Tibbs & Company's entry, so far as your orators have by their purchases under them become the proprietors of the land; that he may restore the possession to your orators; that he may account for the rents and profits since he has dispossessed your orators, which have or shall accrue, that an account of said rents and profits may be taken and decreed to your orators; and that your orators may have such other and further relief as their case may entitle them to upon all the matters herein before stated, and all the incidental matters of equity growing out of the same, and that said Walden may disclose whether he has any other patent or interference than his own claim and entry before described; and, if so, that he may set it forth, that the title and right of possession of the land claimed by your orators may be heard in equity and quieted.

They, your complainants, who are citizens of the State of Kentucky, pray the process of this honorable court against said Ambrose Walden, who is a citizen of the State of Virginia, directed, &c., commanding, &c., &c.; and as in duty, &c.

BIBB, *for Complainants.*

Spa. in chancery.

Subpœna in chancery, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Ambrose Walden to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the Capitol, in Frankfort, on the twenty-fourth day of our present May term, to answer a bill in chancery exhibited against him by Judith Lacey, Susan Lacey, Mary Lacey, Thomas Lacey, Charles Lacey, Walter Lacey, and Daniel, heirs of Elizabeth Lacey, deceased, formerly Elizabeth Clarke, one of the children and heirs of Benjamin Clarke, deceased; Thomas Clarke, Mary H. McMillan, daughter and heir of Mary McMillan, deceased, who was formerly Mary Clarke, daughter and one of the heirs of said Benjamin Clarke, an infant by *his* father and guardian, Andrew F. McMillan, and Virginia Clarke, the said Thomas and Virginia being also children and heirs of said Benjamin Clarke, deceased, Walter Lacey and Andrew F. McMillan, and this he shall in no wise omit under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the Supreme court of the United States, hath caused the seal of our said court to be hereunto affixed, this twenty-fifth day of May, eighteen hundred and twenty-six, and of our independence the fiftieth year.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1830, (until which time this cause was continued on the rules,) came the complainants, by their counsel, and suggested to the court that John Triplett had intermarried with Virginia Clarke; and by consent of the defendant, by counsel, the said John Triplett is made a complainant in this suit with the other complainants.

And on a subsequent day of the term and year aforesaid, came the complainants, by their counsel, and it appearing to the satisfaction of the court that the defendant is not an inhabitant of this district, and he having failed to answer the complainant's bill according to law, and the rules of this court, it is ordered, that unless the defendant appear here on or before the 1st day of the next term of this court, and answer the complainant's said bill, the same will be taken for confessed against him, and the matters thereof decreed accordingly; and it is further ordered that [a] copy of this order be inserted in some authorized newspaper, printed in Frankfort, for 12 weeks successively.

Printer's certificate.

I, Jacob H. Holeman, editor and printer of a public authorized newspaper printed in the town of Frankfort, and State of Kentucky, entitled the "Kentuckian," do hereby certify, that the annexed order of the 7th circuit court, Kentucky district, in the case of Clarke's heirs and others vs. Ambrose Walden, has been regularly inserted in the above named paper by weekly insertions for 12 weeks successively, the first insertion being made on the 28th day of May, 1830. Given under my hand the day and date above written.

J. H. HOLEMAN.

The subsequent orders and proceedings in this cause are copied in the record of Bodley, &c., vs. Walden, and by agreement tried with that cause.

Bodley, &c., vs. Walden, &c.—Record.

STATE OF KENTUCKY,
First judicial district, Fleming circuit, ss:

THOMAS BODLEY and Robert Pogue, complainants,
against
AMBROSE WALDEN and others, defendants. } In chancery.

Pleas before the honorable the judges of the Fleming circuit court, at the court-house thereof, in the town of Flemingsburg, the 17th day of March, in the year 1825.

Be it remembered, that heretofore, to wit, on the 18th day of May, 1815, the complainants of said , by their attorney, filed in the

clerk's office of the court aforesaid their certain bill in chancery against the said defendants, which is in the words and figures following, to wit:

To the honorable the judges of the Fleming circuit court, in chancery sitting, humbly complaining, shew unto your honors: Your orators, Thos. Bodley, James Hughes, and Robert Pogue, that on the 17th day of October, 1783, an entry was made with the surveyor of Fayette county, in the names of Henry Crutcher and John Tibbs, for 10,000 acres of land, in the words and figures following, to wit:

"Henry Crutcher and John Tibbs enters 10,000 acres of land on Treasury warrant, No. 18,747, &c., as by reference to an attested copy thereof, herewith filed, will fully appear; that a survey was legally executed, and a patent obtained thereon, in the names of Robert Rutherford, assignee of Henry Crutcher, and Willoughby Tibbs, heir at law of John Tibbs, deceased, on the day of , 1790; and by regular deeds the legal title to the same is now vested in your orators; to attested copies of which entry, survey, patent, and deeds, your orators beg leave to refer, and pray they may be taken as a part of this bill.

Your orators charge that the said 10,000 acres survey is specially surveyed *from* conformably to entry, and agreeable to law, and possesses all the requisites of a good and valid claim. Your orators further represent and charge, that on the day of , 1780, Ambrose Walden made an entry with the proper surveyor in the words and figures following: "Ambrose Walden enters 1,333⅓ acres of land, &c., as by reference to an attested copy thereof will more fully and at large appear; that on the day of , 1780, John Walden made an entry with the surveyor, as follows: "John Walden enters 1,666⅔ acres of land, &c., as by reference to an attested copy thereof will fully and at large appear; and having caused the same to be illegally and improperly surveyed, so as to interfere with your orator's claim aforesaid, have fraudulently obtained patents of elder dates than the one under which your orators claim as aforesaid.

Your orators charge that the entries of said Walden are vague and uncertain, and ought not to be supported, and that they have been illegally and improperly surveyed so as to *as to* interfere with your orator's special entry aforesaid, inasmuch as the entry of Ambrose Walden calls for and depends upon an entry of a settlement and pre-emption in the name of Jacob Johnson, and the entries made on said settlement and pre-emption in the name of Peter Johnson, heir at law of Jacob Johnson, deceased, call to lay on the east side of the Buffalo road leading from the Blue Licks to Limestone, nine miles from the Lick on the Upper road, when in fact and in truth there are two Blue Licks frequently and commonly known and distinguished by the names of the Upper and Lower Blue Lick, from both and each of which several Buffalo roads extending out towards, and some of them run to Limestone, which makes said entries vague and uncertain; and John Walden's entry calls for and depends on Ambrose Walden's aforesaid. Your orators charge, that the patent for Ambrose Walden's 1,333⅓ acres so fraudulently and illegally obtained, was in the name of Ambrose Wal-

den, who they pray may be made a defendant to this bill; that the said Ambrose Walden has sold and conveyed 200 acres of said tract, and by sundry transfers, the title and possession thereof is now in Dale Carter, who they pray may also be made a defendant herein.

Your orators further charge, that the patent on John Walden's survey of 1,666⅔ acres, was issued in the name of said John Walden, who, as they are informed and believe, hath since departed this life, leaving the said Ambrose Walden, and others unknown, who are not inhabitants of this commonwealth, his heirs and legal representatives; that the said Ambrose, as your orators have been informed, sold and conveyed 200 acres of said tract of land, and by sundry transfers, the title and possession of which is now vested in John, Thomas, William, Jeremiah, Rachel, and Lucinda Proctor, infant heirs and representatives of Jeremiah Proctor, deceased, and Lucius Chapin *at* a certain Lewis Craig, who claimed the locator's part of said survey, has sold and conveyed to Ann Thrailkield, John Thrailkield, and Price, part of the said tract of which they are respect*fully* in possession; all of whom *or* made defendants of this bill, with apt words to charge them. But now, so it is, as may it please your honors, that the said Ambrose Walden and others, combining, &c., well knowing the premises, have refused to convey and relinquish to your orators their elder legal title to the land in controversy, so fraudulently and illegally obtained, and to yield to your orators possession of the premises. To the end therefore, and inasmuch as your orators are remediless by the strict rules of the common law, and can only be relieved in equity; that the said defendants, Ambrose Walden, and the other unknown heirs of John Walden, Dale Carter, the said heirs and representatives of Jeremiah Proctor, deceased, Lucius Chapin, Mrs. Ann *Thrailkeld*, John *Thrailkend*, and Price, may, upon their several corporal oaths, true and perfect answer make to all and singular the premises as fully as if herein repeated and interrogated; that the said defendants may severally exhibit their title papers, and set forth their respective claims, there being a guardian first appointed for the infant heirs of said Proctor, deceased; that they may be decreed to relinquish and convey to your orators all their respective rights and claims to the land in controversy, and that your orators may have such other and further relief as they are entitled to in equity. May it please your honors to grant to your orators the commonwealth's writ of subpœna, &c., &c., &c.

T. BODLEY, *for complainants*."

The entry of Henry Crutcher and John Tibbs, referred to and made a part of the foregoing bill, is as follows, to wit:

1783, 17th October. Henry Crutcher and John Tibbs enters 10,000 acres of land, on a Treasury warrant, No. 18,747, as tenants in common, beginning at a large black ash and a small buckeye, marked thus I. T., on the side of a Buffalo road, leading from the Lower Blue Licks, a N. E. course, and about seven miles N. E. by E. from the said Blue Licks, a corner of an entry *of an entry* of 20,000 acres, made in the name of John Tebbs, John Clarke, John Sharpe, and David Blanch-

ard, and Alexander McLain; running thence with the said Tebb's, &c., line due east, 1,600 poles; thence south 1,000 poles; thence west 1,600 poles; thence north 1,000 poles, to the beginning, for quantity.

Copy.—Attest: J. PRICE, *S. F. C.*

The survey of Robert Rutherford, assignee of Crutcher and Tibbs, referred to in the foregoing bill is not filed.

The following is the patent and deeds, &c., referred to and made part of the foregoing bill, to wit:

"Beverly Randolph, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a land office Treasury warrant, number eighteen thousand seven hundred and forty-seven, issued the fourteenth day of August, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Robert Rutherford, assignee of Henry Crutcher, and unto Willoughby Tibbs, heir at law to John Tibbs, deceased, a certain tract or parcel of land containing 10,000 acres by survey, bearing date the fourteenth day of March, one thousand seven hundred and eighty-four, lying and being in the county of Fayette, and bounded as follows, to wit: Beginning at a large black ash and small buckeye, marked thus, I. T., standing on the road leading from the Lower Blue Licks to the mouth of Limestone, about eight miles northeast by east from the said Licks; running thence due east, six hundred poles, to a small creek; thence continuing the same course, three hundred poles, to a small creek; thence continuing the same course, seven hundred poles, in all amount to one thousand six hundred poles, and cornering at a buckeye, honey locust, and black walnut; thence due south, at four hundred poles, crossed a creek; thence continuing the same course, six hundred poles, and cornering at a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking, at eight hundred poles; thence continuing the same course, sixty poles, crossed the said fork again; thence continuing the same course, seven hundred and forty poles, in all amounting to one thousand six hundred poles, and cornering in a large sink hole on two red oaks and honey locust; thence due north, at four hundred and eighty poles, crossed the main branch of the east fork of Licking, continuing the same course, at sixty poles, crossed the said fork again, continuing the same course, at sixty poles, crossed the said fork the third time, amounting to one thousand eight hundred poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Rutherford and Willoughby Tibbs, and their heirs, forever.

"In witness whereof the said Beverley Randolph, esq., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and ninety, and of the commonwealth the fifteenth.

"BEVERLEY RANDOLPH." [SEAL.]

Upon which is the following endorsement, to wit:

"Robert Rutherford and Willoughby Tibbs are entitled to the within mentioned tract of land.

"JNO. HARVIA, *R. L. O.*"

To all to whom these presents shall come, or in any wise concern; we, Robert Rutherford, of Berkley county, John Peyton, and Charles Magill, of the town of Winchester, in the Commonwealth of Virginia, send greeting:

Know ye, that we, reposing especial trust and confidence in the integrity of our friend, Buckner Thruston, esq., of Lexington, in the Commonwealth of Kentucky, and for other good causes and considerations us, the said Robert Rutherford, John Peyton, and Charles Magill, hereunto moving, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, him, the said Buckner Thruston, our true and lawful attorney, for us, and in our name, to make, sign, seal, and execute, and deliver unto Thomas Bodley, of the said town of Lexington, a good and sufficient deed in fee simple for all our right, title, interest, and estate in and to a certain tract or parcel of land, situate on the waters of Licking, in Mason county, in the said Commonwealth of Kentucky, containing ten thousand acres, with a special warranty against ourselves and our heirs, without recourse, in case the said lands or any part thereof should be lost or taken by better claims; which said tract of land was granted by patent from the Commonwealth of Virginia to the said Robert Rutherford, as assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased, on the 26th day of August, 1790, particularly described in the said patent; and the one undivided moiety thereof was conveyed to the said John Peyton by the said Willoughby Tibbs, by deed now of record in the clerk's office of the Washington district court, or in some other court of record in the said State of Kentucky, in which moiety he, the said Charles Magill, by a subsequent agreement, became equally concerned with the said John Peyton, but hath not obtained a deed from him for the same; and we do hereby declare that such conveyance, so executed by him, our said attorney, shall be irrevocably binding on ourselves and ourselves in as full and ample a manner as if we had been personally present and did the same ourselves. [L. S.]

In witness whereof we have hereunto set our hands and seals this 5th day of October, 1798.

R. RUTHERFORD. [SEAL.]
J. PEYTON, [SEAL.]
CHAS. MAGILL. [SEAL.]

Sealed and delivered in the presence of—

At a superior court continued and held for the district composed of the counties of Frederic, Berkley, and Shenandoah, at Winchester, on Friday the 5th day of October, 1798. Present: Robert White, jr., and Paul Carrington, jr., esquires, judges of the general court. This

power of attorney, from Robert Rutherford, John Peyton, and Charles Magill, to Buckner Thruston, was acknowledged by the said Robert, John, and Charles, and ordered to be certified by the court.

JOHN PEYTON, *Clerk.*

VIRGINIA, *to wit:*

I, Robert White, jr., one of the judges of the general court, for the commonwealth aforesaid, and presiding judge of the district court now sitting at Winchester, do hereby certify, that the above order, testifying the execution of the foregoing letter, is in due form of law, and that there is no public seal to the said district court.

Certified under my hand this 9th day of October, 1798, at Winchester.

ROBERT WHITE, Jr.

STATE OF KENTUCKY,
Lexington district, ss:

I, Thomas Bodley, clerk of the supreme court for the district aforesaid, being authorized by law to receive the acknowledgment of, and admitting to record it in my office, deeds and other writings, do certify, that the within written letter of attorney, together with the within written acknowledgment thereof, and order, and the within written certificate were produced to me in my office, and are truly recorded therein.

Given under my hand, this 11th of February, 1799.

THOS. BODLEY, *C. L. D. C.*

FLEMING COUNTY, *ss:*

I, James Crawford, deputy for Joshua Stockton, clerk of the court for the county aforesaid, certify, that this power of attorney from Robert Rutherford, John Peyton, and Charles Magill, to Buckner Thruston, was this produced before me; and John Kercheval, of Mason county, made oath that he was well acquainted with the handwriting of the said Rutherford, Peyton, and Magill, and that he believed that the signatures to said power was their handwriting, and said power of attorney is duly recorded.

Given under my hand this 4th of September, 1821.

JAMES CRAWFORD.

This indenture, made this fifteenth day of February, in the year of our Lord one thousand seven hundred and ninety-nine, between Robert Rutherford of Berkley county, John Peyton and Charles Magill of Frederic county, in the State of Virginia, of the one part, and Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, of the State of Kentucky, of the other part, witnesseth: That the said Robert Rutherford, John Peyton, and Charles Magill, for and in consideration of the sum of one thousand and fifty pounds, current money of Kentucky, to them paid, the receipt whereof they do hereby acknowledge, do by these presents grant, bargain, sell, alien, and confirm unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue,

their heirs and assigns forever, all that tract or parcel of land lying and being in the counties of Mason and Fleming, in the State of Kentucky, on the waters of Johnson's fork of Licking, and bounded as follows, to wit: "Beginning at a stake where there formerly stood a large black ash and small buckeye trees, marked I. T., on the road leading from the Lower Blue Licks to the mouth of Limestone creek, about eight miles N. E. by E. from the said Licks; running thence due east six hundred poles, to a small creek, continuing the same course to another small creek, continuing the same course, in all one thousand six hundred poles, to a buckeye, honey locust, and black walnut; thence due south, at four hundred poles crossed a creek, continuing the same course, in all one thousand poles, to a black walnut, white ash, and hickory; thence due west, crossing the east fork of Licking at eight hundred poles, continuing the same course, in all one thousand six hundred poles, to two red oaks and a honey locust in a sink hole; thence due north, at four hundred and eighty poles crossed the main branch of the east fork of Licking, continuing the same course, at sixty poles crossed the said fork again, crossed the said fork the third time at sixty poles, continuing the same course, in all one thousand poles to the beginning, containing ten thousand acres, by survey made in the names of Henry Crutcher and Willoughby Tebbs, heir at law to John Tebbs, deceased, on the fourteenth day of March, 1784, and patented to Rutherford, assignee of Henry Crutcher and Willoughby Tebbs, heir at law of John Tebbs, deceased; one half of the said tract was conveyed by the said Willoughby Tebbs to John Peyton, by deed recorded in the clerk's office of the Washington district court, and one half of the said moiety transferred by the said Peyton to Charles Magill by agreement; together with all and singular the improvements and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold the land hereby conveyed, with all and singular the premises, unto the said Thomas Bodley, James Hughes, Robert Campbell and Robert Pogue, their heirs and assigns forever; and the said Robert Rutherford, John Peyton, and Charles Magill, for themselves, their heirs, executors, or administrators, the aforesaid tract of land with the appurtenances, against the claim or claims of them or either of them, and their heirs, and against all claims of dower or other incumbrances which may arise under them or their heirs, unto the said Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, their heirs or assigns, do and will warrant and forever defend by these presents. But it is understood and expressly agreed, between the parties, that in case the whole or any part of the said land should be lost or taken by elder or better claims, the said Rutherford, Peyton, and Magill are not to refund or be accountable for any part of the purchase money, as they only sell the right of themselves and their heirs, without any recourse.

In witness whereof the said Robert Rutherford, John Peyton, and Charles Magill, by Buckner Thruston, their attorney in fact, duly authorized by power of attorney, bearing date the 5th day of October,

1798, and recorded in the clerk's office of the Lexington district court, have hereunto set their hands and affixed their seals the date first above written.

ROBERT RUTHERFORD, [SEAL.]
JOHN PEYTON, [SEAL.]
CHARLES MAGILL. [SEAL.]

Executed in the presence of—
JAMES BROWN,
LEWIS MARSHALL,
JOHN ARTHUR MACGREGOR.

STATE OF KENTUCKY,
Washington district, ss:

I, John Chambers, deputy clerk of the Washington district court, do certify, that this indenture, from Robert Rutherford, John Peyton, and Charles Magill, by Buckner Thruston, their attorney in fact, to Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, was, on the 20th day of February, in the year 1799, produced before me, proven by the oaths of Lewis Marshall, a subscribing witness thereto, and was, on the 26th day of August, in the year 1799, aforesaid, proven by the oath of James Brown, another subscribing witness thereto, and was this day proven by the affirmation of MacGregor, another subscribing witness thereto, and is truly recorded in the office of the said court.

Given under my hand this 19th day of September, 1800.

"JOHN CHAMBERS."

This indenture, made this 6th day of August, in the year of our Lord one thousand eight hundred and four, between Robert Campbell and Rebecca, his wife, of Mason county, State of Kentucky, of the one part, and Thomas Bodley, James Hughes, and Robert Pogue, of the other part. Whereas the said Robert Campbell and the parties of the second part, in the year 1798, became joint purchasers from Peyton and Magill, of Winchester, and Robert Rutherford, of Berkley county, Virginia, of a survey of ten thousand acres of land on Johnson's fork of Licking, in Mason and Fleming counties, Kentucky, entered in the names of J. Tebbs and Henry Crutcher, patented to Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased, and the same was conveyed to the said Thomas Bodley, James Hughes, Robert Pogue, and Robert Campbell, by deed dated the day of , duly recorded in the clerk's office of the Washington district court; and whereas the said Robert Campbell had a claim to a pre-emption of 1,000 acres of land, entered in the name of William Hays, assignee of David Binny, and patented to the said Campbell, the greater part of which is included within the said ten thousand acre survey; and by an article of agreement between the said parties, dated the 16th day of March, 1801, it is, among other things agreed and stipulated, that the said Campbell shall release and convey to the said Bodley, Hughes, and Pogue, all the right, title, claim, and interest of him, the said Campbell, of, in, and to all the said

ten thousand acres of land, except as to so much thereof as is covered by and included in the patent boundaries of the said Campbell's pre-emption; and that the said Bodley, Hughes, and Pogue shall release and convey to the said Campbell all their right, title, claim, and interest under their said claim of 10,000 [acres,] to all that part of the said Campbell's pre-emption which is included within the said 10,000 acre survey; all which will appear by a reference to the said agreement, in which the contract between the parties is fully stated.

Now, this indenture witnesseth, that the said Robert Campbell and Rebecca, his wife, for and in consideration of the premises above recited, and for the further consideration of five shillings, current money, to them paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and convey, unto the said Thomas Bodley, James Hughes, and Robert Pogue, their heirs or assigns, forever, all the right, title, claim, and interest of the said Robert Campbell, under the purchase and deed aforesaid, in and to the before described 10,000 acres of land, agreeably to the boundaries and descriptions in the patent and deed aforesaid, except as to such thereof as covers and is included within the patent boundaries of the said Campbell's pre-emption as aforesaid; together with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land and premises hereby conveyed, unto the said Bodley, Hughes, and Pogue, their heirs or assigns, forever; and the said Robert Campbell and Rebecca, his wife, for themselves, their heirs, &c., the said land and premises, unto the said Bodley, Hughes, and Pogue, their heirs or assigns, against the claim or claims of the said Robert Campbell and Rebecca, his wife, their heirs, and all persons claiming or to claim by, through, or under them, do, and will warrant and defend by these presents. But [it] is agreed by the parties, and it is the true intent and meaning of this indenture, that if the whole or any part of said land should be lost or taken by any better claim, the said Robert Campbell is not bound to refund, nor is he liable or subject to any costs or damages whatsoever, as he only transfers and relinquishes his right to the said land, without any kind of recourse.

In testimony whereof the said Robert Campbell and Rebecca, his wife, have hereunto set their hands and seals, the day and date first above written.

ROBERT CAMPBELL, [SEAL.]
REBECCA CAMPBELL. [SEAL.]

Signed and acknowledged in presence of—

MASON CIRCUIT, *ss:*

I, Francis Taylor, clerk of the court for the circuit aforesaid, do certify, that this indenture from Robert Campbell and Rebecca, his wife, to Thomas Bodley, James Hughes, and Robert Pogue, was this day produced before me, acknowledged by the said Robert Campbell, a party thereto, and a copy thereof is duly recorded in my office.

1798, and recorded in the clerk's office of the Lexington district court, have hereunto set their hands and affixed their seals the date first above written.

ROBERT RUTHERFORD, [SEAL.]
JOHN PEYTON, [SEAL.]
CHARLES MAGILL. [SEAL.]

Executed in the presence of—
JAMES BROWN,
LEWIS MARSHALL,
JOHN ARTHUR MACGREGOR.

STATE OF KENTUCKY,
Washington district, ss:

I, John Chambers, deputy clerk of the Washington district court, do certify, that this indenture, from Robert Rutherford, John Peyton, and Charles Magill, by Buckner Thruston, their attorney in fact, to Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, was, on the 20th day of February, in the year 1799, produced before me, proven by the oaths of Lewis Marshall, a subscribing witness thereto, and was, on the 26th day of August, in the year 1799, aforesaid, proven by the oath of James Brown, another subscribing witness thereto, and was this day proven by the affirmation of MacGregor, another subscribing witness thereto, and is truly recorded in the office of the said court.

Given under my hand this 19th day of September, 1800.

"JOHN CHAMBERS."

This indenture, made this 6th day of August, in the year of our Lord one thousand eight hundred and four, between Robert Campbell and Rebecca, his wife, of Mason county, State of Kentucky, of the one part, and Thomas Bodley, James Hughes, and Robert Pogue, of the other part. Whereas the said Robert Campbell and the parties of the second part, in the year 1798, became joint purchasers from Peyton and Magill, of Winchester, and Robert Rutherford, of Berkley county, Virginia, of a survey of ten thousand acres of land on Johnson's fork of Licking, in Mason and Fleming counties, Kentucky, entered in the names of J. Tebbs and Henry Crutcher, patented to Rutherford, assignee of Henry Crutcher and Willoughby Tibbs, heir at law of John Tibbs, deceased, and the same was conveyed to the said Thomas Bodley, James Hughes, Robert Pogue, and Robert Campbell, by deed dated the day of , duly recorded in the clerk's office of the Washington district court; and whereas the said Robert Campbell had a claim to a pre-emption of 1,000 acres of land, entered in the name of William Hays, assignee of David Binny, and patented to the said Campbell, the greater part of which is included within the said ten thousand acre survey; and by an article of agreement between the said parties, dated the 16th day of March, 1801, it is, among other things agreed and stipulated, that the said Campbell shall release and convey to the said Bodley, Hughes, and Pogue, all the right, title, claim, and interest of him, the said Campbell, of, in, and to all the said

ten thousand acres of land, except as to so much thereof as is covered by and included in the patent boundaries of the said Campbell's pre-emption; and that the said Bodley, Hughes, and Pogue shall release and convey to the said Campbell all their right, title, claim, and interest under their said claim of 10,000 [acres,] to all that part of the said Campbell's pre-emption which is included within the said 10,000 acre survey; all which will appear by a reference to the said agreement, in which the contract between the parties is fully stated.

Now, this indenture witnesseth, that the said Robert Campbell and Rebecca, his wife, for and in consideration of the premises above recited, and for the further consideration of five shillings, current money, to them paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and convey, unto the said Thomas Bodley, James Hughes, and Robert Pogue, their heirs or assigns, forever, all the right, title, claim, and interest of the said Robert Campbell, under the purchase and deed aforesaid, in and to the before described 10,000 acres of land, agreeably to the boundaries and descriptions in the patent and deed aforesaid, except as to such thereof as covers and is included within the patent boundaries of the said Campbell's pre-emption as aforesaid; together with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold the land and premises hereby conveyed, unto the said Bodley, Hughes, and Pogue, their heirs or assigns, forever; and the said Robert Campbell and Rebecca, his wife, for themselves, their heirs, &c., the said land and premises, unto the said Bodley, Hughes, and Pogue, their heirs or assigns, against the claim or claims of the said Robert Campbell and Rebecca, his wife, their heirs, and all persons claiming or to claim by, through, or under them, do, and will warrant and defend by these presents. But [it] is agreed by the parties, and it is the true intent and meaning of this indenture, that if the whole or any part of said land should be lost or taken by any better claim, the said Robert Campbell is not bound to refund, nor is he liable or subject to any costs or damages whatsoever, as he only transfers and relinquishes his right to the said land, without any kind of recourse.

In testimony whereof the said Robert Campbell and Rebecca, his wife, have hereunto set their hands and seals, the day and date first above written.

ROBERT CAMPBELL, [SEAL.]
REBECCA CAMPBELL. [SEAL.]

Signed and acknowledged in presence of—

MASON CIRCUIT, *ss:*

I, Francis Taylor, clerk of the court for the circuit aforesaid, do certify, that this indenture from Robert Campbell and Rebecca, his wife, to Thomas Bodley, James Hughes, and Robert Pogue, was this day produced before me, acknowledged by the said Robert Campbell, a party thereto, and a copy thereof is duly recorded in my office.

Given under my hand, the 6th day of August, 1804.

FRANCIS TAYLOR.

This indenture, made this 23d day of May, in the year of our Lord one thousand seven hundred and *twenty*-five, between Willoughby Tibbs, of the town of Dumfries, in the county of Prince William, in the Commonwealth of Virginia, and Betsy, his wife, of the one part, and John Peyton, of Winchester, in the county of Frederic, and commonwealth aforesaid, of the other part, witnesseth: That for and in consideration of the sum of seven hundred pounds, current money of Virginia, to the said Willoughby Tibbs in hand paid by the said John Peyton, at or before the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, and for other good causes and considerations him hereunto moving, they, the said Willoughby Tibbs and Betsy, his wife, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said John Peyton, and his heirs, all his, the said Willoughby Tibbs', undivided moiety or half part of two certain tracts or parcels of land, situate on the waters of Licking, in the State of Kentucky, one of which tracts contains three thousand acres, and the other ten thousand acres, as particularly described in two patents, granted for the same by Beverley Randolph, esquire, then governor of Virginia, to Robert Rutherford, assignee of Henry Crutcher, and to the said Willoughby Tibbs, heir at law of John Tibbs, deceased, which patents bear date, respectively, the 26th day of August, 1790, reference thereto being had may more fully appear; together with all tenements, hereditaments, and appurtenances, to the said undivided moiety of the two tracts or parcels of land above mentioned, and thereby intended to be bargained and sold, free and clear of all incumbrances whatsoever, except the taxes now due thereupon, unto the said John Peyton, his heirs and assigns, forever, to the only proper use and behoof of him, the said John Peyton, his heirs and assigns, forever; and the said Willoughby Tibbs, for himself and his heirs, the land hereby intended to be bargained and sold, unto the said John Peyton, his heirs and assigns, against them, the said Willoughby Tibbs and Betsy, his wife, and their heirs, and all and every other person or persons claiming by, from, or under him or them, shall warrant and forever defend.

In witness whereof the said Willoughby Tibbs and Betsy, his wife, have hereunto set their hands and seals, the day and year *and year* first before written.

WILLOUGHBY TIBBS, [SEAL.]
BETSY TIBBS. [SEAL.]

Sealed and delivered in presence of—

PRINCE WILLIAM COUNTY, *to wit:*

Personally appeared Willoughby Tibbs, the person named in the foregoing indenture as the grantor thereof, before us, two of the justices of the peace, in and for the county aforesaid, and signed, sealed, and

acknowledged the same indenture to be his act and deed, for the purposes therein mentioned.

Given under our hands, this 23d day of May, 1795.

ALEXANDER LITHGOW,
WILLIAM BARNES.

COMMONWEALTH OF VIRGINIA,
Prince William county, ss:

[SEAL.] I, John Williams, clerk of the county aforesaid, do hereby certify, that Alexander Lithgow and William Barnes, gentlemen, who granted the above certificate, are justices of the peace in and for the county aforesaid, and that due faith and credit ought to be given to the said certificate, as well in courts of justice as thereout.

In testimony whereof I have hereunto set my hand, and affixed the seal of my said county, this 23d day of May, 1795, and in the 19th year of the commonwealth.

JOHN WILLIAMS.

STATE OF KENTUCKY, *Washington district, ss:*

I, Francis Taylor, clerk of the Washington district court, being authorized by law to receive and admit to record in my office deeds and other writings, do certify, that this indenture from Willoughby Tibbs and Betsy, his wife, to John Peyton, was on the 12th day of August, 1796, produced before me, and is, together with the certificate thereto annexed, duly recorded in my office.

FRANCIS TAYLOR, *C. W. D. C.*

(A copy.)—Attest: MARSHALL KEY,
Clerk of Mason county court.

The entry of Ambrose Walden, referred to and made part of the foregoing bill, is not filed.

The entry of John Walden, referred to and made part of the foregoing bill, is as follows, to wit:

May 22d, 1780.—John Walden enters 1666⅔ acres upon a Treasury warrant, joining the above entry on the south and southeast, to include three cabins built by Simon *Canton*, running east and southeast for quantity.

A copy.—Teste: O. BELT, *Deputy*
For JOHN M. FOSTER, *R. L. O.*

Upon the foregoing bill, process issued in words and figures as follows, to wit:

The Commonwealth of Kentucky, to the sheriff of Fleming county, greeting:

We command you to summon Ambrose Walden, Lucius Chapin, John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lucinda Proctor, heirs and representatives of Jeremiah Proctor, deceased; Ann Threlkeld, John Threlkeld, Dale Carter,

and John Price, to appear before the judges of the Fleming circuit court, at the court-house in Fleming county, on the first day of the next June term, to answer a bill in chancery, exhibited against them by Thomas Bodley, James Hughes, and Robert Pogue; and this they shall in no wise omit under the penalty of £100; and have then there this writ.

Witness Thomas Dougherty, clerk of our said court, at the court-house aforesaid, the 18th day of May, 1815, and 23d year of the commonwealth.

THOMAS DOUGHERTY, *C.*

Upon which subpœna the sheriff made the following return, to wit:

"Executed, May the 25th, on all except Price, Walden, and Carter; Walden and Carter not in my bailiwick; Price is dead.

JAMES SAUNDERS, *D. S.*
For WM. S. SHACKLEFORD, *Sh'ff F. C.*

The Commonwealth of Kentucky, to the sheriff of Mason county, greeting:

We command you to summon Ambrose Walden, Lucius Chapin, Jno. Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lucinda Proctor, heirs and representatives of Jeremiah Proctor, deceased; and Anne Threlkeld, John Threlkeld, Dale Carter, and Price, to appear before the judges of the Fleming circuit court, at the court house, in Fleming county, on the first day of the next June term, to answer a bill in chancery exhibited against them by Thos. Bodley, Jas. Hughes, and Robt. Pogue; and this they shall in no wise omit under the penalty of £100; and have then there this writ.

Witness Thomas Dougherty, clerk of our said court, at the court-house aforesaid, the 18th day of May, 1819, and 23d year of the commonwealth.

THOMAS DOUGHERTY, *C.*

Upon which subpœna the sheriff made the following memorandum and return, to wit: "Came to hand May the 25th, 1815."

WM. G. BULLOCK, *D.*
For JOS. KEY, JR., *S. M. C.*

"Executed on Dale Carter May the 31st, 1815; the other defendants not found."

WM. G. BULLOCK, *D.*
For JOS. KEY, JR., *S. M. C.*

The Commonwealth of Kentucky, to the sheriff of Fleming county, greeting:

We again command you to summon Ambrose Walden and Dale Carter to appear before the judges of the Fleming circuit court, at the court-house, in Fleming county, on the first day of the next March

term, to answer a bill in chancery exhibited against them by Thomas Bodley, James Hughes, and Robert Pogue; and this they shall in no wise omit under the penalty of £100 each; and have then there this writ.

Witness Thomas Dougherty, clerk of our said court, at the court-house aforesaid, the 30th day of November, 1815, and 24th year of the commonwealth.

THOMAS DOUGHERTY, *C.*

Upon which the sheriff made the following return, to wit: "Not found."

JAMES SAUNDERS, *D. S.*
For W. S. SHACKLEFORD, *S. F. C.*

At a court continued and held for the Fleming circuit, at the court-house thereof, in the town of Flemingsburg, on Friday, the ninth day of June, 1815, the defendant, Ambrose Walden, not having entered his appearance herein agreeably to law and the rules of this court, and it appearing to the satisfaction of the court that he is not an inhabitant of this commonwealth, on the motion of the complainants, by their counsel, it is ordered, that the said defendant appear here on the first day of the next September term of this court, and answer the complainants' bill, or the same will be taken as confessed against him, and that a copy of this order be published in some authorized newspaper of this State, for eight weeks in succession, according to law.

On the motion of the complainants it is ordered, that the surveyor of Fleming county go upon the lands in controversy between the parties on the day of next, if fair, if not, the next fair day, and survey and lay off the same as either party may require, having due regard therein to the interest and evidence of both parties, state all matters of fact specially, and return 4 fair plats and reports thereof to the clerk's office before the day of hearing; and the sheriff of Fleming county is directed to attend on said surveyor, upon request, and remove force, if any should be offered; and the cause is continued until the next circuit court.

At a court continued and held as aforesaid, on Friday, the 8th day of September, 1815, on motion of the complainants, by their counsel, it is ordered, that this suit be discontinued as to the defendant John Price; that Mary Thomas be appointed a guardian to defend this suit for John Proctor, Thomas Proctor, William Proctor, Jeremiah Proctor, Rachel Proctor, and Lorenda Proctor, infant heirs and representatives of Jeremiah Proctor, deceased; and that the surveyor of Fleming county go upon the lands in controversy between the parties on the day of next, if fair, if not, the next fair day, and survey and lay off the same as either party may require, having due regard therein to the interest and evidence of both parties, state all matters of fact specially, and return four fair plats and reports thereof to the clerk's office before the day of hearing; and the sheriff of Fleming county is directed to attend the said surveyor, (upon request,) and remove force,

if any should be offered; and the cause is continued until the next circuit court.

The joint answer of the defendants, John and Anne Threlkeld, and that of the heirs and representatives of Jeremiah Proctor, deceased, by their guardian, were severally produced, and ordered to be filed, which are as follows, to wit:

The answer of Anne Threlkeld and John Threlkeld to a bill in chancery, exhibited against them and others in the Fleming circuit court by Thomas Bodley, James Hughes, and Robert Pogue:

These defendants, now and at all future times, saving and reserving every benefit of exception to the errors, &c., in the complainants' bill, say, for answer: That they claim two hundred and twenty-two acres of the entry of Walden, made for acres of land, being part of the locator's part, to wit: Part of that which Simon Kenton, for locating, was entitled to by agreement bearing date the 1st of May, 1780, and signed and sealed by the said Simon Kenton and the said Ambrose Walden, which, on the 24th of April, 1787, the said Kenton assigned to John Craig and Robert Johnston, which, being assigned by the said Robert Johnston on the 18th of May, 1791, to the trustees of said John Craig, was by them transferred to Lewis Craig on the 28th of December, 1793, the original of which being on file in the office of the United States circuit court for Kentucky, in a suit between said Walden and Craig, with the aforesaid various assignments, is consequently out of the power of these defendants, but a copy of which they beg leave to refer to, and will in due time file as evidence in this cause. These defendants claim by purchase of said Craig, and have deeds made therefor, which will at least vest in them the equitable title of Craig to the land, which deeds they will also introduce as evidence at the trial. The defendant Anne claims at this time only one hundred acres, having disposed of a part of her original purchase of Craig to her co-defendant John, who claims at this time 122 acres. These defendants, not being competent judges, refer the goodness of Walden's claim, under which they hold, to this honorable court. These defendants, and those under whom they claim, have been in possession of their land more than twenty years before this suit was brought against them, and they plead their long-continued possession as a bar to the complainants' right of recovery in this suit, as they are informed and believe the said complainants are not excepted by the statute, but are barred by the adverse possession of twenty years of these defendants, who have made large and valuable improvements on the land. These defendants know nothing of the complainants' claim, except from information, and they require full proof of its equity, and specialty, and notoriety. These defendants deny all fraud with which they are charged, and pray to be dismissed hence, with the benefit of Walden's elder patent, their long and uninterrupted possession of twenty years, and their costs herein expended.

REID, *Atto.*

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Beginning at a hickory and blue ash adjoining John Threlkeld's land, and run[ning] south 70° east, 96 poles, to a buckeye, box elder, and small oak, adjoining Daniel Threlkeld's land; thence south 98 poles, to a blue ash and hickory; thence east 92 poles, to a honey locust, buckeye, and box elder; thence south 20° east, 45 poles, to a sugar tree, blue ash, and oak; thence north 80° west, 220 poles, to a blue ash, black ash, and buckeye, adjoining John Price's land; thence north 20° east, 129 poles, to the place of beginning; to contain one hundred acres, more or less, together with all the improvements, water courses, profits, and appurtenances whatsoever to the premises belonging, or in any wise appertaining, and the reversion, remainder, and profits thereof; and all the estate, right, title, and interest, claim, property, and demand of him, the said Lewis Craig, of, in, and to the same. To have and to hold the lands hereby conveyed, with all and singular the premises, with every part and parcel thereof, with every of the appurtenances, to the only proper use, benefit, and behoof of her, the said Ann Threlkeld, her heirs, and assigns, forever.

And the said Lewis Craig, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said Ann Threlkeld, her heirs and assigns, by these presents, that the premises now are, and forever shall hereafter remain, free, of and from all former and other gifts, grants, bargains, sales, dowers, right and titles of dowers, judgments, executions, titles, troubles, charges, and incumbrances whatsoever, done or suffered to be done by him, the said Lewis Craig. And the said Lewis Craig, of Mason county, State of Kentucky, and his heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Ann Threlkeld, her heirs and assigns, against him, the said Lewis Craig, and his heirs, and all and every other person or persons whatsoever, doth and will warrant and forever defend by these presents.

In testimony whereof the said Lewis Craig doth hereunto affix his hand and seal, the day and year above written.

LEWIS CRAIG. [SEAL.]

Signed, sealed, and delivered, in presence of—

STATE OF KENTUCKY, *Washington district, sct:*

I, John Chambers, deputy clerk of the Washington district court, do certify, that this indenture, from Lewis Craig to Anne Threlkeld, was this day produced before me, acknowledged by the said Lewis Craig, a party thereto, and is duly recorded in the office of the said court.

Given under my hand, this 12th day of January, 1801.

JOHN CHAMBERS.

A copy—attest:

MARSHALL KEY,
Clerk Mason county court.

The defendants objected to the admissibility as evidence of: 1st. The power of attorney filed by the complainants, purporting to be a power of attorney from Peyton, Magill & Rutherford. 2nd. To the deed pur-

porting to be the deed of Rutherford, Peyton & Magill to Bodley. 3d. To the deed purporting to be the deed from Tibbs to Peyton. They object also [to] the copy of assignment, purporting to be the assignment of Simon Kenton to Wood & Fox, of his survey of 740 acres, (for want of proof of its execution by Kenton.)

REID & CHAMBERS, *P. D.*

By consent of the parties, Joseph Morrison is appointed to make out a survey, to be used on the trial of this suit; and he is permitted to lay down the claims of the parties from a copy of the survey filed in the suit, Bodley, &c., against John Taylor, and that he be authorized to lay down any Buffalo road, or other object which either party may direct, from the survey made out by Zachariah Easton, in the suit Bodley against Shannon, &c., or from other surveys returned by said Morrison in any other suit in the Fleming or Mason circuit court, or surveying done by him on the ground. And the patent claims of Walden, as well as the patent claims of the complainants, so far as relates to boundary, is admitted.

REID, *for Proctor's heirs.*
JOHN & ANN THRELKELD.
THOS. BODLEY, *for compl'ts.*

The deposition of Simon Kenton, taken at the house of James Artus, in the presence of the attorneys for the parties, to be read as evidence in a suit in chancery now depending in the Fleming circuit court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden and others defendants.

This deponent, being first duly sworn, deposeth and saith, that, about the first of May, 1780, he entered into an agreement with Ambrose Walden to locate 10,000 acres of land warrants on the shares, for which service this deponent was to have one-third part of the land so located; after this agreement was signed, and before the warrants were located, this deponent made application to have a part of the warrants assigned to him, that they might be entered in his own name. Walden done so; and this deponent has a perfect recollection of 1,000 acres which he entered at the mouth of Strode's run, and he thinks another small warrant of about 300 acres. About the year 1786 or '7, or perhaps 1785, this deponent sold his interest in the land located under the agreement, to Wood & Fox, without reserving the warrants which were assigned before the locations were made; after the *sail* was made, and discovering the mistake, this deponent went forward and transferred the land to said Wood & Fox, or to some person agreeable to their orders to fill the article. This deponent thinks that Wood & Fox sold the interest to John Craig and Robert Johnson, and it may be that the interest of the locator might have been transferred directly to Craig & Johnson, having previously taken a release from Wood & Fox or Craig & Johnson.

Questions by defendants. Who is entitled to the 1,000 acres, Wood and Fox or Craig and Johnson? I mean the 1,000 acres located at the mouth of Strode's run in your name as assignee of Walden?

Answer. I cannot tell; I sold to Wood and Fox, but whether I assigned to them in writing, or to Craig and Johnson, who purchased of them, I do not remember.

By same. Did you receive the 1,000 acres located at Strode's run, and the 300 acres, or either, or all, in full for locating the ten thousand acres?

Answer. I was to have one-third of the ten thousand acres by agreement, and I did receive, by assignment of warrants, perhaps one thousand acres and three hundred, but I am not certain as to the latter. I know I received 1,000 acres by assignment, in part, of my third part of ten thousand from Ambrose Walden. I will add, that the agreement was dated the first of May, 1780; a copy is hereto annexed, and a copy of the assignment to Craig and Johnson, made by me on the 24th of April, 1787, together with the assignment from Robert Johnson to Robert Johnson and Elijah Craig, trustees for John Craig, dated the 18th of May, 1791, and the assignment also to Lewis Craig, dated the 28th December, 1793, made by Robert Johnson and Elijah Craig, trustees for John Craig; but the last assignments I know nothing about, but it may be that I made the one to Craig and Johnston, and I think it probable, because they purchased of Wood and Fox, to whom I first sold.

SIMON KENTON.

July 27th, 1822.

MASON COUNTY, *ss:*

The foregoing deposition of Simon Kenton was taken, subscribed, and sworn to before the undersigned, a justice of the peace for said county, at the house of James Artus, on the 27th July instant.

Given under my hand, this 27th day of July, 1822.

JAMES ELLIS.

June the 9th, 1821.

Being called on by Robert Pogue, at the request of Thomas Bodley, to state what I know about the road from Limestone to the Upper Blue Lick, I can only state that, as early as the year 1784, the year I came to Kentucky, there was a road that came from Limestone that crossed the north fork at the mouth of Mill creek, and went by the way of Mud Lick; on the Upper Blue Lick the road was plain, and had an old appearance. There was also a fork that took off to the right, that passed by where Mill's station was afterwards built, and I think passed a little to the right of the Mud Lick; I went to the Upper Blue Lick.

WILLIAM WOOD.

DEAR SIR: Agreeable to your request I went to see Mr. William Wood, and made the inquiry you directed me. The above statement is the substance of what he will prove on the subject.

I am, respectfully, your servant,

ROBERT POGUE.

I admit this deposition or affidavit of William Wood to have all the weight it could as a deposition; but, to rebut it, I am at liberty to take Simon Kenton's deposition without notice.

WALKER REID.

The deposition of Gen'l Simon Kenton, taken at the clerk's office in Mason, on the 15th June, 1820, as evidence in the suit in chancery, in the Fleming circuit court, Thomas Bodley and others against Ambrose Walden and others.

This deponent says that was the locator of John Walden's and Ambrose Walden's claims on the waters of Johnson's fork, and that he attended the survey of those claims, and has been upon the land since the same was settled, and thinks the residence of the defendants, Mrs. Threlkeld, John Threlkeld, and Mrs. Thomas, late Mrs. Proctor, are within the boundaries of those two claims. He says that he cannot now point out the improvements called for in those entries; he thinks, however, he could, by examining the land and going all over it. But as to the claim of Jacob Johnston, he can say with certainty that it was made upon the Upper Buffalo road, leading from the Lower Blue Licks towards Limestone, and that the said road was ever since the year 1775, called the Upper Buffalo road, in consequence of there being two other roads branching off, all near the battle ground, on this side of the Blue Licks, and both running towards Limestone and crossing the North Fork below this road; this road, he calls the Upper Buffalo road, is the one or very nearly the same, leading past Clarke's barn, and crossing Johnson's fork at the mill; but the old road crossed some distance above Clarke's mill.

SIMON KENTON.

MASON COUNTY, *ss:*

This deposition of Simon Kenton was taken, subscribed, and sworn to before the subscriber, at the clerk's office, in Mason county, the 15th of June, 1821, before the subscriber, a justice of the peace of said county.

JAMES ELLIS.

"The deposition of John Rust, aged about 62 years, taken to be read as evidence in a suit in chancery, in the Fleming circuit court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, John Threlkeld, and others, are defendants; taken by consent, at the house of John Faris, in Flemingsburg, on the part of the complainants. This deponent, being duly sworn, deposeth and saith, that in the year 1775, as well as he now recollects, he came to Kentucky in company with Matthew Rust, John Tibbs, Thomas Tibbs, Samuel Wells, Hayden Wells, Thomas Young, William Triplett, Jonathan Higgs, and Richard Masterson; they landed at Limestone, and explored the country, and made improvements in that neighborhood, and on the waters of the North fork of Licking. He recollects that there was a Buffalo road or path which appeared to be considerably used by Indians, from the marks or sign, from Limestone creek to the mouth of

Mill creek, on the North fork of Licking; that the company travelled on said road, which went up Limestone creek, and from the head of the creek across near where Gen'l H. Lee now lives, to the mouth of Mill creek. He has been informed and believes that all the company before named, except Hayden Wells, Thomas Young, and myself, are dead; and further saith not JOHN RUST.

MASON COUNTY, *ss:*

This day the foregoing deposition of John Rust was taken, subscribed, and sworn to, in due form, before me, a justice of the peace for said county. Given under my hand, this 6th day of September, 1820.

SALATHIEL FITCH.

"The deposition of John McIntyre, taken at the house of John Faris, in Flemingsburg, on the 8th day of June, 1820, to be read in evidence in a suit in chancery depending in the Fleming circuit court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, John Threlkeld, Proctor's heirs, and others, are defendants.

This deponent, being about 60 years of age, and duly sworn, deposeth and saith, that he came to Kentucky, at Boonsborough, about the month of November, 1779; that he staid there but a short time, and then came to the north side of Kentucky river, and assisted to erect Strode's station; he first became acquainted with the Upper Blue Lick in the fall of the year 1780; that he was with a party of men in pursuit of Indians, and travelled from the Upper Blue Lick, northeastwardly on a large Buffalo road, to the forks of what is called Wilson's run, and then encamped, which place he showed to Joseph Morrison, surveyor of Fleming county, on yesterday; at this place the roads fork, the left hand fork took off towards the Mud Lick, on a branch of Johnson, and the right hand past by Stockton's improvement, where Major George Stockton formerly lived near Flemingsburg. The company took the right hand road, and kept on to somewhere about Cassidy's branch; thence from the appearance of the Indian sign, they concluded it was not necessary to follow the Indians any further; the company divided, and he with others took over the head of Johnson's fork, across the Buffalo road that lead past the Mud Lick, near where Major Tully formerly lived, and continued on until they struck a Buffalo road, which lead to the Lower Blue Licks, and went on home. He was again at the Upper Blue Licks, and explored the country on the waters of Fleming creek, and over to the waters of the North Fork, in the year 1782, in company with Capt. John Fleming. He then travelled the left hand fork of the road aforesaid, from Wilson's run to the Mud Lick, and was on it in several places from the Mud Lick over towards Mill creek, and in the year 1784 he came out with a large company to survey, and became acquainted with all the Buffalo roads in this quarter of the country. He states there was a Buffalo road, which was large and plain, from the Upper Blue Lick to the Mud Lick, on the waters of Johnson, crossed Johnson's fork near where Johnson Ross now lives, and kept up the branch through Joseph Ross's planta-

tion, through the plantation where Major Tully lived; from there to William's run, near where Charles Bell now lives; from there through Fitzgerald's place to Mill creek, down Mill creek to the mouth, and from there there was a road which lead over towards Limestone creek, and a pathway to Dixter's camp near Washington, which intersected the road from May's lick to Limestone; there are to this day several places where the traces of said road are visible, some of which he has shown to Joseph Morrison, surveyor, this day and yesterday, who has taken a note of the same.

Question by defendants, John Threlkeld, Ann Threlkeld, and Jeremiah Proctor's heirs.

How many roads were there, called leading roads from the Blue Licks or Lower Blue Licks, to Limestone; and how would you designate them at the time you became acquainted with those Licks in 1780?

Answer. There were three [roads] leading from the Lower Blue Licks to Limestone, which I became personally acquainted with in 1784. They were called the Upper Buffalo road, the Lower road, and the Middle road or trace. The upper road leading by Clarke's, and crossing Johnson's fork just above Clarke's mill, and [which] I knew in 1780, having travelled it between May's Lick and Johnson's fork to the said Licks, before the year 1784, when he became personally acquainted with the upper, lower and middle road, leading from the Lower Blue Licks towards Limestone; he had heard said roads spoken of by persons conversant in that quarter of the country.

By same. How many roads (if any,) were there leading from the Upper Blue Licks to Limestone?

Answer. The road I have spoken of crossed the North fork at the mouth of Mill creek, and lead from the Upper Blue Licks; and there was another road leading from said Upper Lick, passing by and crossing Fleming where Newcomb now lives; crossed Johnston below the first road passing Mill station, and intersecting the road before it got to the mouth of Mill creek, which empties into the North fork; this last road was not as large as the first one into which it fell, and that was [not] near as large as the road called the Upper road leading from the Lower Blue Licks to Limestone, and passing Johnston's fork just above *the* Clarke's mill as aforesaid.

Question by same. Did you know, or ever hear, that the road leading from the Upper Blue Licks, and crossing the North fork at the mouth of Mill creek, lead to Limestone; or did you ever hear it called the upper, lower, or middle road, leading from the Upper Licks to Limestone?

Answer. I do not know where it lead to, after crossing the North fork; I have heard it called the road from the Upper Blue Licks to Limestone, but I never did hear of a road called the Upper road leading from said Licks to Limestone.

Question by same. Did you, in the year 1784, hear or know any thing of Jacob Johnson's settlement and pre-emption, on what is now called Johnson's fork?

Answer. I was with John Tebbs and others at the corner now claimed by Thomas Bodley, in March, 1784, and did understand from Tebbs that Jacob Johnson's claim lay on that road, and that was talked of among the companies, and three companies of surveyors met there; it is my belief that Johnson's claim lay on the north side of Johnson's fork, and that the creek took its name from Johnson.

Were the Blue Licks and Upper Blue Licks distinguished by those names as early as 1780, or were they called Upper and Lower Blue Licks, or how were they called and known?

Answer. They were generally the Upper or Lower Blue Licks; sometimes Upper or Lower Salt Springs.

Question by complainant. Were there, or were there not, when you first became acquainted with the country, Buffalo roads or traces leading from both the Upper and Lower Blue Licks up the principle creeks and branches, and along the ridges, between Licking and the North fork?

Answer. There were Buffalo paths leading along the principal ridges, and up nearly all the branches of any size; some people call them roads, but I call most of them paths.

By ditto. Were or were not there two salt springs at the Lower Blue Licks; and were they or not generally called the Lower Blue Licks from your first knowledge of them.

Answer. Yes, there was one on each side of Licking river, and they were generally called the Lower Blue Licks; there was but one salt spring at the Upper Blue Licks, and that on the south side of the river.

By defendants. Suppose an entry had called for the Buffalo road leading from the Blue Lick to Limestone, and to be upon the upper road from said Lick to Limestone, had been shown to you, and your opinion asked of the entry, what [would] you give as its beginning?

Answer. I should have supposed it to be on the upper road from the Lower Blue Licks to Limestone, provided it had said Licks instead of Lick.

Question by complainants. Was not there a Buffalo road, leading out to the east of what is now called Limestone road from the Lower Blue Licks, which went up the Flat fork and Briar fork of Johnson and fell into the main road near May's Lick?

Answer. There was, and I showed it to Zach. Easton when making a survey in the suit Bodley, &c., against Shannon and others; and further saith not

JOHN McINTIRE.

FLEMING COUNTY, *ss:*

This deposition was taken and sworn to in the presence of the complainants, and Walker Reid, esq., attorney for defendants, before me, a justice of the peace for said county, this 8th day of June, 1820.

N. FOSTER.

BODLEY & Co. vs. TAYLOR. } In chancery, in the federal court.

The deposition of Michael Cassidy, taken by consent. This deponent saith:

Question by complainants. Do you know there was a Buffalo road leading from the Upper Blue Lick to Limestone; and if so, what time did you acquire a knowledge of that road?

I know of no principal road leading to Limestone; there was a Buffalo road leading from the Upper Lick, which fork went past the Mud Lick on the waters Johnson's, and on towards Mill creek; my first knowledge of it was in the fall or winter of 1792. I afterwards, in '89 or '90, in opening a road from my station to Mills' station, *I* intersected and followed that Buffalo road which was then plain; that road passed a little to the west of the defendant, Taylor's S. E. corner, and on a direction towards Drennon's pre-emption.

Question by defendant. Was not the Buffalo road, from what is now called the Lower Blue Licks to Limestone, when you first became acquainted with it, much the largest and most direct one to Limestone, which the present public road now runs nearest to?

Answer. Yes.

Question by same. Was there not a plainer road leading from the Upper Blue Lick to the Ohio than the one you first spoke of?

Answer. There was one equally plain; if there was any difference as to Buffalo sign, the first one had the preference, as it passed through the richest woods; the other was most travelled by Indians, and also called the War road; that what is now called the Mud Lick fork is not as long as the other fork, which, since my knowledge of it, in 1783, has been called the Main fork of Johnson, by about two miles with the meanders?

Were not the Flat fork, Mud Lick fork, and what is now called the Middle Main fork, all considered as branches only of Johnson's fork?

Answer. Yes; but the Middle fork was called the Main fork of Johnson, and the other two had their names as early as 1784.

MICHAEL CASSIDY.

Sworn to in open court at November term, 1804.

THOMAS TUNSTALL.

The deposition of William Stafford, taken by consent at the house of Philip Burke, in Frankfort, to be read in evidence in the suit in chancery depending in the United States court for the Kentucky district, wherein Thomas Bodley, &c., are complainants, and John Taylor defendants, taken on behalf of the complainants:

This deponent, being of full age, and duly sworn, deposeth and saith:

Question by complainants. Do you know that there was a Buffalo road from the Upper Blue Lick to Limestone, or towards that part of the Ohio; and, if so, when were you first acquainted with it?

Answer. In the year 1778, when coming from the Ohio, and, from what he has since been informed, he believes it was near the mouth of

Lawrence's creek, with a party who had followed Indians; they fell into a buffalo road, which took them to the Upper Blue Licks; they struck the road on their left hand, about 5 or 6 miles from the Lick; the road was large and plain, and appeared to be a good deal used by buffaloes; when we first struck the road we supposed it to lead to the Lower Blue Licks, and did not know the country until we came near the Upper Blue Licks.

Question by H. Taylor for defendants. Do you know that the road you struck, 5 or 6 miles from the Upper Blue Licks, went to Limestone?

Answer. I do not; it went towards the Ohio; and further this deponent saith not.

W. STAFFORD.

Sworn to in open court at November term, 1804.

THOMAS TUNSTALL, *C. K. D. C.*

Copies.—Test:

JOHN H. HANNA, *C. C. C. K. D.*

Articles of agreement made and done this 1st day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth himself to locate ten thousand acres for the said Ambrose Walden in the district of Kentucky, in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of the one-third of the said ten thousand acres so located unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and lastly, both parties to the performance of the premises, under the penalty of fifty thousand pounds.

SIMON KENTON, [SEAL.]
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in the presence of—
ANGUS CAMERON,
JOSEPH CAKITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of 3,000 acres entry in the

name of Walden, and one third of 3,000 acres entry in the name of John Taylor, and one third of one thousand five hundred acres in the name of William Nelson; John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON,
Trustee to Jno. Craig.
ELIJAH CRAIG,
Trustee to Jno. Craig.

A copy.—Teste:

JNO. H. HANNA, *C. C. C. K. D.*

The deposition of Lewis Craig, jr., taken this 27th August, 1823, at the office of Jno. H. Hanna, clerk of the United States circuit court for the Kentucky district, in Frankfort, to be read as evidence in a suit in chancery depending in the Fleming circuit court, wherein Thomas Bodley and Robert Pogue are complainants, and Ann Threlkeld and others are defendants:

The deponent being of lawful age, and duly sworn, deposeth and sayeth, that he hath examined the original writing, and assignments thereon, (of which the foregoing is a copy,) filed in the federal court office, and hath no doubt that the assignment of 18th May, 1791, and December 28th, 1793, are in the handwriting of Robert Johnson, and that the signatures of Robert Johnson and Elijah Craig are each in their own handwriting, and hath often seen them write; that he hath compared the foregoing copy with the original, and it is truly copied; and further saith not

THOMAS CRAIG, JR.

The deposition of William S. Waller, taken the same time and place, to be read as evidence in the same suit:

The deponent, being of lawful age, and duly sworn, deposeth and saith, that he hath also examined the agreement and assignments mentioned in the deposition of Lewis Craig, jr., and hath no doubt that the signatures of Robert Johnson are in his own hand; he hath seen him write frequently; he hath seen writings purporting to have been written by Elijah Craig, and from a comparison of hands he hath no doubt that the signature of Elijah Craig to the last assignment is in his own hand; he hath compared the foregoing copy with the originals, and finds them truly transcribed; and further saith not

WILL. S. WALLER.

FRANKLIN COUNTY, *ss:*

The foregoing depositions of Lewis Craig, jr., and William S. Waller, were taken, subscribed, and sworn to, before the subscriber, a justice of the peace for said county, the time and place set forth in the caption.

Given under my hand this 27th August, 1823.

J. SWIGERT, *J. P.*

The deposition of John Kercheval, of lawful age, taken at the house of John Faris, in Flemingsburg, on the 8th day of June, 1821, to be used as evidence in a suit in chancery, depending in the Fleming circuit court, wherein Thomas Bodley and Robert Pogue are complainants, and Ambrose Walden, Threlkeld, and others, are defendants:

This deponent, being duly sworn, deposeth and saith, that he has examined a power of attorney from Robert Rutherford, John Peyton, and Chas. Magill, to Buckner Thruston, dated the 5th day of October, 1798, upon which this deponent has subscribed his name; that he is well acquainted with the said Rutherford, of Berkley county, Peyton and Magill, of Winchester, Virginia, and has frequently seen them write, and he is well satisfied and positive that the signatures to said power of attorney *is* in the handwriting of the said Rutherford, Peyton, and Magill, severally; Rutherford was a conspicuous character in that section of country; Peyton was clerk, and Magill was an attorney; this deponent acted as deputy sheriff in Frederic county for about 10 years, and was as well acquainted with the handwriting of those gentlemen as with that of any person of his acquaintance; and further this deponent saith not.

JOHN KERCHEVAL.

FLEMING COUNTY, *ss:*

The above deposition was sworn to before me, a justice of the peace for said county, by John Kercheval, in due form. June 8th, 1821.

HENRY BRUCE.

Upon which deposition is the following, to wit: "I admit this deposition; and the complainants allow the defendants to take Simon Kenton's and D. V. Payne's depositions, to be taken without notice, to prove, if they can, that they hold under Walden's claim; and the complainants admit that the defendants' land sued for is within Walden's patent, as laid down on the plat."

WALKER REID, *for Defendants.*

The deposition of Hayden Wells, taken at the court-house, in Montgomery county, State of Tennessee, this 15th day of July, 1805, and to be used in evidence in a suit in chancery, depending in the Mason circuit court, in which Alexander K. Marshall is complainant, and Thomas Young is defendant:

This deponent, being first sworn, deposeth and saith, that in the year 1775 he, in company with Samuel Wells, Richard Masterson, William Triplett, and others, descended the Ohio, and landed at the mouth of Limestone, for the purpose of exploring and improving the land in that neighborhood; that he, with a part of the company, took the path and went up the river hill at Limestone, and found a plain path to the North fork, which path crossed at the creek that we called Wells' creek, now called Mill creek; we then returned to Limestone, and some time after, about two weeks, we made a survey, and as we

returned from the North fork we went into the aforesaid path, and found the trail of a large party of Indians going towards our camp at Limestone; and when we came to Limestone we found they had crossed the Ohio at Limestone; and when we went out at the mouth of Wells' creek, now called Mill creek, we found that the Indians had crossed at that place, and that the boys at the camp told me that the Indians told them that they came from the Lower Blue Licks, and that they had been out in that woods ever since the leaves first put out; and I was told, I think, by William Triplett and Samuel Wells, that in the year 1776 that there was a party of Indians crossed at the mouth of Mill creek whilst they staid there in camp.

Question 1st, by defendant. If you had been asked by any person where the Indians crossed the North fork that leads from Limestone to the Lower Blue Licks, would you direct them to Mill creek or to Lee's creek?

Answer. I should have directed them to Wells' creek, now called Mill creek, for I did not know any at Lee's creek, neither did I know Lee's creek.

2nd, by same. *Is* not paths that is travelled by Indians out of the settlement, such as the one you spoke of, commonly called war paths, or roads?

Answer. Yes; they

Question 3d, by same. What was your opinion of that road in the year 1774?

Answer. I believe it was [the] road travelled by the Shawnee and Delaware Indians. HAYDER WELLS.

Teste: JAMES STEWART, *J. P.*
Montgomery county.

Upon which deposition is the following, to wit:

This deposition may be used as evidence in this suit, Bodley and Pogue against Walden, &c., and to have the same effect as if taken in said suit. REID, *for Defendants.*

The deposition of *Bartlett* Fitzgerald, of full age, taken at the house of Johnson, and to be read in evidence in the suit in chancery depending in the circuit court of Mason, in which Alexander K. Marshall is complainant, and Thomas Young is defendant.

This deponent being first sworn, says, he first became acquainted with the North fork of Licking, at the mouth of Mill creek, in the year 1775; that at that time there was a buffalo road crossed at the mouth of Mill creek, but it was not a war road, it had no marks or appearances of Indian camping grounds on it; and this deponent being directed by the company to point out the place proper for improvements, did so; and in making those selections, made the first marks which were on the creek called Mill creek. He is uncertain where the northern end of the Buffalo road lead to, but he pursued the southern end as far as the forks of Mill creek; he has ascertained that the right hand fork of said road lead to the Upper Blue Licks, and the left hand fork

lead up the said Mill creek, to about where Stockton settled; and this deponent was among the first that settled on Mill creek. This deponent further says, that below the forks of the road, where this deponent lives, and is above spoken of, the said road forked again, and the right hand fork went over to the feeding grounds, between Pogue's and May's lick, where it was wasted and lost. The said last mentioned fork was about three-quarters of a mile from the mouth of Mill creek.

Question by Captain Young. At what time were you acquainted with the place now called May's lick?

Answer. In January or February, 1796, though it was not then called May's lick, I was acquainted in the neighborhood, though not with the spot in that year. I was acquainted with Hayden's big spring, where Shotwell's spring-house stands, not far from the lick.

Question. Did you ever know of a spring at May's lick?

Answer. I never knew of any spring but Hayden's spring.

Question by same. Did you ever hear that spring called May's spring?

Answer. I never did. It has always been called Hayden's spring; and further this deponent saith not.

BARTHOLEMEW FITZGERALD.

The deposition of Major Geo. Stockton, taken at the house of George Farris, in Flemingsburg, Fleming county, on the 11th day of May, 1810, between the hours of 9 in the morning and 6 in the evening, to be read as evidence in a suit depending in chancery in the general court, wherein Robert Morrison and others are complainants, and the heirs of Thomas Coghill, deceased, and Edwin Hord, are defendants.

This deponent (being first sworn) deposeth and saith, that he was at the mouth of what is now called Mill creek in the year 1776, and knows that there was a large trace which crossed the North fork of Licking, at the mouth of said creek; but at that time this deponent knew no particular name attached to Mill creek, which he never knew by that name until the year 1784. This deponent can state that the trace aforesaid, which crossed immediately below the mouth of said creek, was large in 1776, and from thence to the mouth of Limestone, which was at that period a noted landing place. This deponent will further add, that he knew Johnson's fork of Licking by that name in the year 1784, and not before. This deponent will further add, that the trace aforesaid was marked with blazes and chops on the trees; and this deponent understood subsequently, to wit, as early as June, 1784, that the said trace was known by the name of a war road; and further saith not

GEORGE STOCKTON.

FLEMING COUNTY, *ss:*

The foregoing deposition was taken before us, the subscribers, two of the commonwealth's justices of the peace for said county, agreeable to notice herewith filed, and as stated in the foregoing preamble.

Given under our hands, this 11th day of May, in the year 1810.

WILLIAM FLEMING, *J. P. F. C.*
EDW'D DORSEY, *J. P. F. C.*

Upon the back of which deposition was the following, to wit:

The foregoing deposition of Bartholemew Fitzgerald and Geo. Stockton are to be read as evidence in the suit, Bodley, &c., against Walden, &c., and to have the same effect as if taken in said suit.

REID, *for Defendants.*

The depositions of sundry witnesses, taken at the house of B. B. Stith, in the town of Washington, Mason county, agreeable to notice, on the 22d day of November, 1816, to be read as evidence in the suit in chancery depending in the Fleming circuit court, wherein Thomas Bodley is complainant, and Ambrose Walden, John Threlkeld, and others, are defendants, taken by the complainants.

David Blanchard, of lawful age, being duly sworn, deposes and says: That about the latter part of the month of June, in the 1783, he went out from Lexington in company with John Tibbs, John Clarke, and Alexander McLain, and on a buffalo road leading from the Lower Blue Licks towards Limestone, he saw John Tebbs mark a large ash and small buckeye trees with the letters I. T., for the beginning of an entry of 20,000 acres, which said trees stood on the main Buffalo road leading from the Lower Blue Licks to Limestone, about one and a half miles northeastwardly from where the said road crosses Johnson's fork of Licking, and about 20 or 30 feet in front of the house where Mrs. Nicholson, commonly called the big widow, lived, and has since been occupied by John Vanoy, and is the place, as he is informed, represented on the connected plat, to be used in this suit, by the letter A. That the said letters I. T. were large and plain, and the trees stood in a conspicuous place. This deponent says he is positive as to the place on account of his having got water out of a remarkable sink hole near where the trees stood; he says he was again at the said trees when John Tibbs began to make the survey therefrom, in March, 1784, and the survey of 20,000 acres was then made, and the lines and corners plainly marked. This deponent says, that at the time the trees were marked, the party called a branch of Johnson's fork, which they crossed in going over the land, McConnell's fork; this deponent says these trees were generally known to those who passed along said road; they stood almost in it; he has passed by them in company since they were marked, some years as often as ten times in a year, and generally observed to those in company while they stood there, [this] is Tibbs & Co's beginning. This deponent says he has no interest either for or against the establishment of this beginning. Some years ago he sold out his interest to Thomas Bodley, and the purchaser released him from all responsibility, which release is of record in the clerk's office of Mason county, and an attested copy thereof is referred to as part of this desposition; and whether the land is obtained or not, he is not liable in any way. This deponent says he has always understood that the Lower Blue Licks has been a place of great notoriety ever since the battle fought near it between the white people and the Indians in the year 1782, which has always been spoken of as the battle of the Blue Licks.

Question by complainants. Have you not understood and believed

that all the persons who were with you when the I. T. trees were first marked are dead, and that Matthew Walker, who once gave his deposition at said beginning, when taken to perpetuate testimony, is also dead?

Answer. Yes.

Question by ditto. Have you ever seen any other ash and buckeye trees marked I. T. standing on a buffalo road, northeastwardly of the Lower Blue Licks?

Answer. No; and further this deponent saith not.

DAVID BLANCHARD.

Henry Lee, of lawful age, being duly sworn, deposeth and saith: That about the month of March, 1784, he came from Lexington to the place described in the foregoing deposition of David Blanchard, as the beginning corner of Tebbs & Co's 20,000 acre entry, in company with John Tebbs, David Blanchard, Alexander McLain, and several others; that there was then on the ash, which stood as described in said deposition, the letters I. T., apparently marked with a tomahawk; also a buckeye, about a foot in thickness, which stood about ten or twelve feet from the ash, also marked with the same letters; that they encamped near the place, and the next morning John Tebbs began a survey, and marked the trees as a corner, which he understood was the survey of their entry of 20,000 acres.

This deponent is positive as to the place where the trees stood, having frequently travelled the road, and generally noticed the trees whilst standing, and the place where they stood since they were cut down. This deponent says that the said trees stood on the main Buflalo road leading from the Lower Blue Licks to Limestone, a northeastwardly course, which road was generally travelled by those who passed through this part of the country. This deponent says the letters on the trees were large; the trees stood in a conspicuous place, and the letters appeared as if *they* might have been cut the summer before he first saw them; this deponent says he has always understood that the Lower Blue Licks was a place of great notoriety ever since the battle fought near that place, between the white people and the Indians, in the year 1782, which has been generally spoken of as the battle of the Blue Licks; upon being interrogated by the complainant, the deponent says, that when he was first at the I.T. trees, when Tebbs began to make the survey of 20,000 acres, there were present John Tebbs, this deponent, Richard Masterson, and he thinks William Howard, all surveyors, with their companies, he believes in all 15 or 16 in number. He thinks Tebb's and Co's claim of 20,000 acres was notorious and well known to those conversant in that part of the country; from March, 1784, when the survey was made, it was frequently spoken of, and he found the northwardly boundary of said survey, where it crossed the Limestone road, pursued it to the N. E. corner, and found it plainly marked; he has understood and believes that Matthew Walker, who gave his deposition at said beginning corner, when depositions were taken to perpetuate testimony, is dead; he has never seen any other ash and buckeye

trees, marked I. T., standing on a Buffalo road, leading from the Lower Blue Licks a northeastwardly course; and further this deponent saith not.

H. LEE.

Duvall Payne, of lawful age, being duly sworn, deposes and says, that he was employed by Thomas Bodley to make a survey of 16,000 acres on Tebbs & Co's entry of 20,000 acres, in the year 1796; that he began the survey about 20 feet from the door of Mrs. Nicholson, on the road leading from Limestone to the Lower Blue Licks, in which house John Vanoy has since lived, and is more particularly described in the foregoing deposition of David Blanchard, and ran north, which course ran over the chimney of the house; and in running the line he found an old line plainly marked the whole distance, and near a horse mill; the place is now in Alexander Dougherty's field; he found an ash and honey locust trees, marked as corner trees, which he was then informed had been marked as a corner for said 20,000 acres, and for other surveys which called to adjoin it; and he called for the same trees as the corner of the 16,000 acre survey, which he then executed. This deponent says, that in the fall of the year 1789, he arrived in this country with his family; he travelled along said road, and saw one of the trees with the letters I.T. upon it, at the place where he afterwards began the survey, being shown the same by Thomas Young; and he saw the trees a dozen of times afterwards.

D. V. PAYNE.

MASON COUNTY, *sct:*

The foregoing depositions of David Blanchard, Henry Lee, and Duvall Payne, were subscribed and sworn to at the time and place therein stated; Blanchard's and Lee's before D. V. Payne, and said Payne's before Robert Pogue. Given under our hands and seals, as justices of the peace for said county, this 22d day of November, 1816.

D. V. PAYNE, [SEAL.]
ROBERT POGUE. [SEAL.]

The depositions of sundry witnesses, taken at the clerk's office of the Fayette circuit court, in Lexington, on Saturday, the 2d day of May, 1812, to be read as evidence in a suit in chancery now depending and undetermined in the Mason circuit court, wherein Thomas Bodley and James Hughes are complainants, and Hugh Shannon and others are defendants, commenced about the hour of 3 o'clock in the afternoon, taken on the part of the complainants, (no person attending on the part of the defendants,) agreeable to notice produced; John Baker, of full age, being duly sworn, deposeth and saith, that about the last of November, 1784, when travelling from Limestone to Lexington, in company with James Parker, he thinks Richard Masterson and others, not now recollected, he was shown by the said James Parker or Masterson, or some of the company, an ash and buckeye trees, marked with the letters I.T., standing on the Buffalo road which is

now called the Limestone road, about a mile and a quarter or a mile and a half northeastwardly of where the Limestone road crossed Johnson's fork, which he was then informed by the company was the beginning corner of John Tibbs & Co's large entry or survey; that he noticed the trees particularly, because his brother, James Parker, had made a purchase of part of John Clarke's interest in said claim for one of his sisters; he well recollects that the trees were plainly marked with the letters I. T. pretty large, but he cannot say whether the ash was a black or blue ash, not being at that time well acquainted with the different species of ash, and not now recollecting particularly the kind of ash tree the letters were marked on; but it appeared to him it was well known to some of the company as Tebbs and Company's beginning; he travelled the road several times afterwards, and always noticed the trees, but does not recollect to have seen them after an improvement was made near where they stood. He well recollects the situation and appearance of the ground, and is confident the trees stood near a place which was afterwards generally called the Big Widow's.

Question by the complainant. Were you acquainted with John Tibbs, John Clarke, John Sharp, Alexander McLain, and Matthew Walker, all of whom formerly resided in or near Lexington; and do you know, or have you heard, that all or any of them are dead? If so, state which of them, and all you know on the subject.

Answer. I was acquainted with all the men above named, except John Sharpe, in 1784. I have heard and always understood that Tibbs died in Lexington many years ago; that John Clarke died at Cincinnati, Ohio, and that Walker died at the mouth of Kentucky river, some 8 or 10 years. I have heard that McLain is dead, but do [not] know when or where he died; and further this deponent saith not.

JNO. PARKER.

FAYETTE COUNTY, *sct:*

The foregoing deposition of John Parker was subscribed and sworn to before me, a justice of the peace for said county, at the time and place stated therein, according to law. Given under my hand, this 2d day of May, 1812.

RICHARD HIGGINS.

Also the deposition of Richard Sharp, of full age, taken at the same place, to be read as evidence in the same suit, taken on the part of the complainants, the 11th day of May, 1812. This deponent being sworn deposeth and saith, that about the month of June, 1792, he was shown an ash marked with the letters *marked* I.T., standing on the Limestone road, about a mile and a quarter from Johnson's fork, and in front and *year* a *cabbin*, which he was informed was the beginning of a survey of 20,000 acres, in the name of John Tebbs, John Clarke, John Sharpe, Alexander McLain, and David Blanchard; and his father, John Sharpe, was interested in the survey; he examined the trees particularly, and is positive that the ash tree which was marked with the letters I. T., large and plain, was a *black* ash. He further saith, that his father, John

Sharpe, has been dead since the year 1807; he does not recollect seeing a buckeye marked I.T. at the place at that time; and further this deponent saith not.

RICHARD SHARPE.

FAYETTE COUNTY, *ss:*

The foregoing deposition of Richard Sharpe was this day subscribed and sworn to before me, a justice of the peace for said county, in due form, this 11th day of May, 1812.

RICHARD HIGGINS.

STATE OF OHIO, *Montgomery county, sct:*

Before me, John Tolkerth, one of the justices of the peace in and for the county aforesaid, came Christopher Curtner, of lawful age, who being sworn according to law, deposeth and saith, that in the winter and spring [of] 1784, this deponent set out from Lexington with John Tibbs, William Howard, and others, to execute some surveys on entries, before that time made by the said Tebbs and others, as this deponent understood, which lay northeast of the Lower Blue Licks; they travelled along a large Buffalo road, and after crossing Johnson's fork they came to the trees called for in Tibbs & Co's entries; this deponent understood it was somewhere about 4 miles from this beginning corner to Maysliek, on the same road, which was the road generally travelled from Lexington to Limestone. This deponent was one of William Howard's chainmen, and assisted to survey, as he understood, a 20,000 acre tract for John Tibbs and others, which began at the before described corner, and another of five thousand acres, beginning at the same place; but this deponent does not recollect what trees were marked.

Question by complainant. Did you or the company then know the difference between a black and blue ash?

Answer. Yes.

Question by complainant. Are you or are you not positive that the ash tree was a black ash?

Answer. I cannot recollect what kind of wood the corner trees were. I was a boy at the time.

Question by ditto. Who were in company with you at the time of making the said surveys? State the names of those you recollect.

Answer. William Howard and another surveyor, (I think John Tebbs,) with their companies, were together, and encamped at the beginning corner. I think David Blachard and Alexander McLain were of the company.

Question by the complainants. Have you not understood and believe that John Tibbs, John Clarke, John Sharpe, Alexander McLain, and Matthew Walker are dead?

Answer. Yes, I have understood so.

Question by ditto. Are you not positive that the trees you began to survey, Tebbs & company's entry, *from* answered the description given in the entry, and were correctly reported by the surveyor in his certificate of survey?

Answer. I cannot recollect the kind of trees, but think one was marked I. T. I am of opinion that the trees answered the description given in the entry, and that the surveyor certified a correct return of the same. I understand the five thousand acre tract before spoken of was surveyed by us for John Fowler; and further this deponent saith not.

CHRISTOPHER CURTNER.

Sworn to and subscribed at the house of David Reed, in the town of Dayton, and county and State aforesaid, on Saturday, the 9th day of May, 1812, about the hour of 11 o'clock, in the day time, to be read as evidence in a suit in chancery now depending and undetermined in the Mason circuit court, State of Kentucky, wherein Thomas Bodley and James Hughes are complainants, and Hugh Shannon and others are defendants; taken on the part of the complainants before me—

JOHN TOLKERTH, *J. P.*

Copies—Attest: FRANCIS TAYLOR, *C. M. C. C.*

The deposition of Gen'l Henry Lee, taken at the house of Balwin B. Stith, on Friday, the 15th inst., to be read as evidence in a suit in chancery, depending in the Fleming circuit court, wherein Waller Overton and William Howard are complainants, and William P. Fleming and others are defendants. This deponent, being aged about fifty years, and first duly sworn, deposeth and saith, and adjourned until Saturday morning next, according to adjournment; and the deponent saith, that about the month of March, 1784, he, in company with John Tebbs, David Blanchard, Alexander McLain, and several others, went to the place of beginning of Tebbs and company's 20,000 acres, and also the beginning of Tebbs and Crutcher's 10,000, an ash and buckeye, marked with the letters I. T., standing on the Buffalo road, lead from the Lower Blue Licks to Limestone, about one and a half miles from where the Buffalo road crossed Johnson's fork of Licking, about 20 or 30 feet in front of the house where Mrs. Nicholson formerly lived, and he is informed that it is now occupied by Thomas Fulcher. The letters I. T. were apparently cut with a tomahawk, large and conspicuous, easily and plainly to be seen by any person passing the road, that the company encamped near the place, and the next morning John Tebbs began a survey and marked said trees as a corner, which he understood was the survey of their entry of 20,000 acres. This deponent states that he has heard that Johnson's fork was also called McConnell's fork. This deponent is positive as to the spot where the trees stood, having frequently travelled the road, and generally the trees, whilst standing, (which are now down,) and the place where they stood since they were cut down. This deponent further states, that the Buffalo road aforesaid lead out from the Lower Blue Licks a northeastwardly course, which was the road generally travelled by those passing through that part of the country to Limestone. This deponent states that the letters on both the trees were plain; the trees stood in a conspicuous place, and the letters appeared as if they had been cut the summer before he first saw them.

This deponent states, that he has always understood and believes that the Lower Blue Licks was a place of general notoriety ever since the memorable battle fought near that place between the whites and Indians in the year 1782, which has been generally spoken of as the battle of the Blue Licks; and further saith not

Signed, H. LEE.

Also Col. Duvall Payne, being first sworn, deposeth and saith, that in the year 1789, in travelling in company with Captain Thomas Young, on the Buffalo road leading from the Lower Blue Licks to Limestone, that on the road Thomas Young showed this deponent an ash and buckeye, marked with the letters I. T., on the side of said road, which were then plain and conspicuous, and had an ancient appearance, which he was informed was the beginning of Tebbs & Co's entry of 20,000 acres, and since that time he did execute a survey on said entry. This deponent is positive as to the place where the trees stood, having passed the place often while they were standing, it being on the Buffalo road leading from the Lower Blue Licks, a northeastwardly course, about seven miles and some poles, near the house formerly occupied by Mrs. Nicholson, and now by Mr. Thomas Fulcher.

Question by complainants. In executing the survey on Tebbs & Co's entry, in the year 1796, did you not follow and find a marked line and corner corresponding for the line and corner of the survey upon said entry?

Answer. I did two corners and two lines; and further saith not

Signed, D. V. PAYNE.

Also the deposition of Capt. John Fowler, of lawful age, who being first sworn, deposeth and saith, that on or about the 1st of January, in the year 1784, at the Fayette court, in the town of Lexington, he became acquainted with John Tebbs, and the inhabitants generally, and at the court aforesaid he was qualified deputy surveyor under Col. Thomas Marshall; during the winter and spring of said year he was frequently in company with Tebbs and other deputy surveyors, when the general subject of conversation turned upon locating lands. The said Tebbs frequently spoke of a large body of excellent lands he and his company had discovered, where he had made entries to a considerable extent; beginning with an entry in the name of himself and others for 20,000; at the same time exhibiting a connected plat, showing the locations he and his company had made adjoining the 20,000 acres aforesaid, and made this deponent a compliment of two locations of 500 acres each about the latter end of February or first of March following. This deponent was employed Col. Thomas Marshall, as chief clerk in his office, as surveyor, and early in March this deponent entered for himself two locations of five thousand acres each, before spoken of and given him by Tebbs.

This deponent says, that, as well as he recollects, he saw the trees said to be marked as the beginning of Tebbs & Co's, on the Buffalo road leading from the Lower Blue Licks a northeastwardly course to

Limestone, to wit, a buckeye and ash, which were then plainly marked with the letters I. T., in the month of November, in the year 1784; and from their appearance he supposes was marked the year before.

Question by complainants. *Was* not the beginning of Tebbs & Co's 20,000 acres become a place of considerable notoriety as early as the winter and spring [of] 1784?

Answer. The entry of Tebbs and his beginning was frequently spoken of in the surveyor's office as early as that period of time.

By same. Would you suppose there would be any difficulty of finding the beginning of Tebbs & Co's entry of 20,000, with the aid of entry?

Answer. I do not, with reasonable search; and further saith not

Signed, JOHN FOWLER.

Also David Blanchard, of lawful age, and being first duly sworn, deposeth and saith, that about the latter part of the month of June, 1783, he went in company with John Tebbs, John Clarke, Alexander McLain, and himself, from Lexington; and on a Buffalo road leading from the Lower Blue Licks to Limestone, he then saw John Tebbs mark an ash and buckeye with the letters I. T., for the beginning of an entry of 20,000, which said trees stood on the main Buffalo road, leading from the Lower Blue Licks to Limestone, about one and a half miles northeastwardly from where the said road crosses Johnson's fork of Licking, and about 20 or 30 feet in front of the house where Mrs. Nicholson formerly lived, now occupied by Thomas Fulcher; that the said letters were large and plain; that the trees stood in a conspicuous place, easily to be seen by any person passing the road, and in search of land marks.

This deponent is positive as to the place, on account of his having encamped near it, and got water out of a remarkable sink hole, near where the trees stood. He also states, he was again at the trees when John Tebbs made a survey thereon in March, 1784. This deponent states, at the time the trees were marked, the company called Johnson's fork, which they crossed in going on the land, McConnell's fork. This deponent states, these trees were generally known to those who passed along the Buffalo road. They stood almost in it. He has passed by them often in company, since they were marked, some years as often as ten times in a year, and generally observed to those in company whilst they stood, "there is the beginning of Tebbs & Co." This deponent states, he has no interest either for or against the claim, having sold his interest and obtained a release upon the sale, which is recorded in Mason county. This deponent states, that he has always understood the Lower Blue Licks to have been a place of great notoriety ever since the battle fought near it between the white people and the Indians, in the year 1782. This deponent further states, that the aforesaid Buffalo road, which passed by the I. T. trees, was the one generally travelled by persons passing through this part of the country, and that he believes the trees aforesaid was well known as the beginning of Tebbs & Co. to all those who were conversant in that part of the country; they stand-

ing immediately on the road, and having frequently myself *having* spoken with others on the subject of the beginning; and further saith not

DAVID BLANCHARD.

MASON COUNTY, *ss:*

The foregoing depositions of General Lee, Captain John Fowler, Duvall Payne, and David Blanchard *and* were severally taken, sworn to, and subscribed in our presence, at the house of B. B. Stith, in the town of Washington, on the 15th and 16th instant.

Given under our hands and seals *a* justices of the peace, this 16th November, 1811.

Signed,

D. V. PAYNE,
J. BROWN.

The deposition of Colonel A. D. Orr, taken at the house of A. D. Roberts, at Mayslick, on Monday, the 18th November, 1811, taken to be read as evidence in a suit in chancery depending in the Fleming circuit court, wherein Waller Overton and William Howard are complainants, and John Hood, John Gallagher, and others, are defendants.

This deponent, being of lawful age, and first duly sworn, deposeth and saith, that in the spring of 1784 he was travelling the Buffalo trace, leading from the Lower Blue Licks to Limestone, in company with Richard Masterson, Caleb Masterson, William Farrow, and others, when this deponent was shewn an ash tree and buckeye, marked with the letters I. T., by the said company, and was informed that the beginning of Tebbs & Co.'s 20,000 acre entry. This deponent states the letters were plain, and the trees stood in a conspicuous place on the side of said road, easily to be seen by any person passing that way; that they were near the house late in the occupancy of Mrs. Nicholson. That the I. T. trees were situated upon the road, which was the usual and common one travelled between the Lower Blue Licks *to* Limestone, and lead out from the said licks a northeastwardly course. This deponent states, that he has heard what is now called Johnson's fork, called McConnell's fork.

Question by complainants. If the entry of Tebbs & Co. of 20,000 acres had been placed in your hands at the Lower Blue Licks, do you not believe you could have found the place of beginning by the aid of said entry, in the spring of the year 1784, with using reasonable search?

Answer. I believe I could.

By same. Was not the I. T. trees, at the beginning of Tebbs & Co.'s entry of 20,000 acres, frequently spoken of in that year and the year before as a place of considerable notoriety, by all persons acquainted in that part of the country?

Answer. They were spoken of by Tebbs & Co. in 1783 and in 1784; they were spoken of generally as a place of considerable notoriety by all persons acquainted in that part of the country.

By same. From the appearance of the letters upon the buckeye and ash, do you not suppose they were made the year before you first saw them?

Answer. I do; Tebbs had told me the fall before that he had marked them and made locations, beginning at that place.

By same. Was not the Lower Blue Licks considered as a place of considerable notoriety as early as 1783?

Answer. Yes; and further saith not

Signed, A. D. ORR.

MASON COUNTY, *ss:*

The foregoing deposition of Colonel A. D. Orr was taken before us, the subscribers, justices of the peace for the county aforesaid, at the time and place first mentioned.

Given under our hands, this 18th November, 1811.

Signed, JAMES MORRIS.

The deposition of Captain Thomas Young, taken at the tavern and inn of Z. Moore, in Paris, on Wednesday, the 26th February, in the year 1812, to be read as evidence in a suit in chancery, depending in the Fleming circuit court, wherein Howard and Overton are complainants, and Randall Leas, John Gallagher, and others, are defendants.

The deponent, being of lawful age, and first duly sworn, deposeth and saith, that he visited Kentucky in 1773, 1775, 1781, 1783, and settled himself in 1784. That in the fall of the year 1783 he was informed by Tebbs & Clarke that they had marked a buckeye and ash with the letters I. T., which stood on the Buffalo road, leading out from the Lower Blue Licks a northeastwardly course; and also informed this deponent that these trees were the beginning of an entry of 20,000 [acres,] in the name of Tebbs, Clarke, Blanchard, &c., and also of Tebbs & Crutcher of 10,000 [acres,] and that in the month of January, 1784, following, the deponent, in passing the Buffalo road leading from Limestone to Lexington, was shewn the trees by David Blanchard, that the letters I. T. were then large and plain on both the trees. The trees stood in a conspicuous place, both or one of them standing in the road, and had the appearance of having been marked some time before, and has ever since known the aforesaid trees as the beginning of the aforesaid entries of 20,000 acres and 10,000 acres. This deponent states, that he believes the I. T. trees were notoriously known to all those conversant in that part of the country, or those who travelled said road, as the beginning of the aforesaid entries, having passed the trees in the summer 1784, in large company, when the trees were noticed and spoken of as the beginning aforesaid. This deponent states, that some time afterwards he showed the aforesaid to Colonel Duvall Payne, he believes in the year 1789; that the Lower Blue Licks was a place of great notoriety in the year 1782, and ever since. This deponent further states, that what is now called Johnson's fork in the year 1783–'4, he often heard called McConnell's fork.

Question by complainant. Do you not believe that with the aid of the entry at the Lower Blue Licks any person in search of the I. T. trees could *not* have found them in the year 1783?

Answer. I think they might.

By same. Had you been in search of the beginning aforesaid, and came to the before recited I. T. trees, would any doubt have remained in your mind of that being the place of beginning of the aforesaid trees?

[Answer.] I should not hesitate to have believed that was the place of beginning; and further saith not

Signed, THOMAS YOUNG.

BOURBON COUNTY, *sct:*

The foregoing deposition of Captain Thomas Young was taken before us, the subscribers, justices of the peace for the county aforesaid, at the time and place first aforesaid mentioned, sworn to and subscribed in our presence.

Given under our hands and seals, this 26th February, 1812.

Signed, THOMAS HUGHES, [SEAL.]
THOMAS JONES. [SEAL.]

NICHOLAS CIRCUIT, *sct:*

The foregoing depositions are truly transcribed from the originals filed in my office, in the suit therein mentioned.

Attest: LEWIS H. ARNOLD, *Clerk.*

The deposition of John Gallagher, to be read in evidence in the suit in chancery, depending in the Fleming circuit court, in which Thomas Bodley, &c., are complainants, and Anne and John Threlkeld, the heirs of Jeremiah Proctor, and others, are defendants.

This deponent, aged about 60 years, being first duly sworn, deposeth and saith, that a certain Andrew Kinkaid settled the farm in controversy in this suit, which is claimed and possessed by the representatives of Jeremiah Proctor; that the said Andrew Kinkaid settled on and commenced the improvement on the tract of land in the winter of the year 1795–'6, perhaps after the commencement of the year 1796. This deponent further saith, Kinkaid continued in possession of the tract of land until he sold it to Jeremiah Proctor, who purchased it and took possession of it as soon as Kinkead moved off, and continued uninterruptedly to possess and reside upon it until his death, and his wife and children have retained the possession ever since. This deponent hath resided in the neighborhood of the land ever since Kinkead settled there, and he has never heard or known of any interruption in the possession of Kinkead or Proctor, but that a man by the name of Lucas occupied it under Proctor for about one year, soon after Proctor purchased of Kinkaid, and then Proctor came into possession and continued it as aforesaid. This deponent further saith, that he has always understood, that the said tract of land settled by Kinkead, and sold by him to Jeremiah Proctor, contained about one hundred and fifty acres; and further saith not

JOHN GALLAGHER.

The deposition of William Summers, taken at the same time and place, and for the same purpose, as the foregoing deposition of John Gallagher.

This deponent, aged about sixty-three years, and being first duly sworn, deposeth and saith, that, in the year 1794, the defendant, Ann Threlkeld, purchased the tract of land in controversy in this suit, on which he now resides, and in the spring of that year (early in the spring) took possession of it, and commenced improving it; and in the course of that year built a hewn log house on it, and has remained uninterruptedly in the possession of it ever since. This deponent further saith, that the said defendant, Ann Threlkeld, purchased the said tract of land of Lewis Craig, of Mason county, and this deponent is a subscribing witness to the title bond given by Craig to the said Ann Threlkeld for the said tract of land.

This deponent further saith, that the defendant, John Threlkeld, settled upon a part of the tract of land purchased by Ann Threlkeld of Craig, as aforesaid, as this deponent always understood, and purchased a small part of it of her; and this deponent cannot recollect certainly the time at which John Threlkeld commenced his improvement, but he knows that, within a few years after Mrs. Ann Threlkeld settled, and this deponent thinks certainly not exceeding five years, he (the defendant, John Threlkeld) settled upon the land in controversy in this suit, on which he now lives, and has had it in his possession ever since; and further saith not

WILLIAM SUMMERS.

FLEMING COUNTY, *sct:*

The within depositions of John Gallagher and William Summers were taken, subscribed, and sworn to before the undersigned, one of the justices of the peace for the county aforesaid, at the clerk's office in Flemingsburg, on the 5th day of September, 1821.

Given under my hand.

HENRY BRUCE.

The deposition of Jonathan Rose, to be read as evidence in a suit in chancery depending in the Fleming circuit court, in which Thomas Bodley and others are complainants, and Ann Threlkeld and others defendants.

This deponent, aged about sixty-seven years, and first duly sworn, deposeth and saith, that he is well acquainted with the land in controversy in this suit, now in occupancy of Anne Threlkeld, John Threlkeld, Mary Thomas, lately Mary Proctor, widow of Jeremiah Proctor, deceased, and he knows that Ann Threlkeld, where she now lives, in the latter part of the year 1794, or early part of the winter [of] 1795, having purchased of Lewis Craig about one hundred and twenty-five acres, as he, this deponent, thinks, of the land, part of which her son John Threlkeld settled some few years afterwards, and they have remained in the undisturbed possession of the land ever since, claiming it under the purchase of Craig, as this deponent has always understood; and further saith not

JONATHAN ROSE.

The deposition of William Moss, taken for the same purpose as the foregoing deposition of Jonathan Rose.

This deponent, aged about years, and being first duly sworn, deposeth and saith, that he removed from Loudoun county, in Virginia, in the fall of the year 1794, and came to this country in November, or early in December of that year, and of that time; he went into a house, with his family, in which the defendant Ann Threlkeld resided, under a lease which she had taken for about four years, on the land of William Summers; which lease this deponent purchased of William Threlkeld, and she (the widow) with all her family removed to the land in controversy in this suit, where she now resides; of which she took possession late in December, 1794, or early in January, 1795, and has lived upon and occupied it ever since without interruption.

This deponent further saith, in month of February, 1775, Andrew Kinkead lived upon and occupied the land in controversy in this suit, which is now occupied by Mrs. Mary Thomas, (who was formerly the widow of Jeremiah Proctor, deceased,) and this deponent was about to purchase the land of Kinkaid, who required all the purchase money in hand, and this deponent made a journey to near the Crab orchard in hopes to borrow the money of an old acquaintance, but did not succeed, and the bargains consequently fell through. Kinkaid some time [after] sold the land to Jeremiah Proctor, who took possession of it when Kinkead left it, and afterwards sold it to one Lucas, a saddler, from Washington, who took possession of it and lived upon it a while, and then either gave up his contract for the purchase, or resold it to the said Jeremiah Proctor, who again took possession of [it;] and since his death his wife, the present Mrs. Mary Thomas, and the children of the said Proctor, have remained in possession of the farm, and resided continually upon it. This deponent has resided near the farm occupied by Mrs. Threlkeld and Mrs. Thomas ever since his first settlement there, and does well know Jeremiah Proctor purchased of Kinkead, Lucas of Proctor, and Proctor again of Lucas, either by giving up his contract for the purchase, or making a new one, and that the possession of the land has in every instance followed the sale, and has been, as far as this deponent knows, uninterrupted; and John Threlkeld got twenty-five acres of his mother Ann Threlkeld's purchase, and bought of his brother James twenty-five acres more of the said tract of land, which James had also purchased of Lewis Craig, and upon which purchase James Threlkeld settled same time his mother settled; but at what time John Threlkeld settled on his purchase of his mother, [or] of his brother James, I do not know; but I do know that the land has been held by Ann Threlkeld, and James Threlkeld, and John Threlkeld, ever since the settlement in 1784; and further he saith not.

WM. J. MOSS.

The deposition of John Hood, for the same purpose as the foregoing depositions of Jonathan Rose and William Moss.

This deponent, aged about *twenty-three* years, and first duly sworn,

deposeth and saith, that he came to Kentucky in the spring of 1794, and, some time in the ensuing fall or winter, he purchased the farm he now lives on in the vicinity of the land in controversy in this suit, and on the 5th or 6th of March, 1795, took possession of his purchase; at which time Andrew Kinkaid lived upon and occupied the farm now in the possession of Mrs. Mary Thomas. Kinkaid afterwards, as I understood, sold the farm to Jeremiah Proctor, who succeeded Kinkaid in the possession of it, and sold it to one Lucas, who occupied it a while, and transferred it to the said Jeremiah Proctor, who, and his family, consisting of widow and children, have occupied and resided upon it ever since Lucas quit the possession; and this deponent has never known or heard of any interruption or disturbance of the possession of Kinkaid and those claiming under him, as above stated; and further this deponent saith not.

JOHN HOOD

The foregoing depositions were taken, subscribed, and sworn to, before me, a justice of the peace for the county of Fleming, this 3d day of June, 1823.

WILLIAM W. BLAIR.

The deposition of William Moss, taken at the house of Henry Bruce on the 26th day of August, 1824, to be read as evidence in a suit in chancery depending in the Fleming circuit court, in which Thomas Bodley is complainant, and Ann Threlkeld, John Threlkeld, and Jeremiah Proctor's heirs, &c., are defendants.

This deponent, aged about fifty-seven years, and duly sworn, deposeth and saith, that he removed from Loudoun county, in Virginia, in the fall of the year 1794, and came to this State in November, or early in December of that year, and that he thinks, some time in the year following, Daniel Threlkeld purchased of Lewis Craig the tract of land, (since purchased *of* by John Threlkeld,) and gave a wagon and two horses for the same; that Daniel Threlkeld married in the winter of 1796, in February, and settled on the land he purchased that same year, in March, and that the defendant, John Threlkeld, has had uninterrupted possession of the land ever since his purchase from Daniel Threlkeld, so far as he knows or believes; and further deponent saith not.

WILLIAM MOSS.

The deposition of Evan Mills, taken for the same purpose as the foregoing deposition of William Moss.

This deponent, aged about fifty years, after being duly sworn, deposeth and saith, that he is well acquainted with the land in controversy in this suit; that Daniel Threlkeld purchased of Lewis Craig, sen., of Mason county, the land which he sold to his brother John Threlkeld, and he recollects of hearing said Craig, some time in the year 1795, say that he had sold land to Daniel Threlkeld; he further recollects, distinctly, that Daniel Threlkeld settled on his purchase with his family

in the spring of 1796, and that John Threlkeld has enjoyed uninterrupted possession ever since he purchased the same from Daniel Threlkeld, so far as he knows or believes; and further this deponent saith not.

EVAN MILLS.

The deposition of John Summers, taken for the same purpose as the foregoing deposition of William Moss and Evan Mills. This deponent, aged about sixty years, after being duly sworn, deposeth and saith: That he removed from Montgomery county with his family and settled in this county (then Mason) in the month of April, 1795, and that Daniel Threlkeld married in February, 1796, and settled early in that spring upon the land which he has since sold to his brother, John Threlkeld; he further states that John Threlkeld has had uninterrupted possession of the land ever since his purchase from his brother, Daniel Threlkeld, so far as he knows or believes; and further this deponent saith not.

JOHN SUMMERS.

The foregoing depositions of William B. Moss, Evan Mills, and John Summers were taken, subscribed, and sworn to before me, a justice of the peace for the county of Fleming, at the time and place mentioned in the caption.

Given under my hand this 26th day of August, 1824.

WILLIAM W. BLAIR.

The deposition of Henry Bruce, as evidence in the suit of Bodley & Co. against John Threlkeld and others, in the Fleming circuit court. This deponent came to this State in December, 1793, and lived some time in the family of Anne Threlkeld, and in the early part of the year 1794 Anne and James Threlkeld purchased of Lewis Craig each 125 acres of land, and commenced improving it, he believes, in the month of March thereafter; and Anne Threlkeld has been in possession of the land ever since, except 25 acres she sold to John Threlkeld in the latter part of the year 1796, or beginning of 1797; and this deponent knows that John Threlkeld built a cabin and removed on the said 25 acres, or else probably the cabin might have stood on the 25 acres he, said John Threlkeld, of his brother James, as the line very near said cabin, the above named two tracts of 25 acres each, from the tract of 50 acres which Lewis Craig deeded to John Threlkeld in the year 1798; John Threlkeld built the house where he now lives on the 25 acres purchased of his mother Ann in the year 1798. This deponent also understood that Daniel Threlkeld purchased of Lewis Craig 72 acres of land in the year 1795, and he knows that said Daniel married in February, 1796, and settled on the said 72 acres in the spring of that year, and remained on the land till the year 1802, and then sold the land to his brother, John Threlkeld, who has been in the possession ever since; this deponent purchased land, and settled adjoining said tract of 72 acres, and has known the lines since the year 1799, and also adjoining the lands of Ann Threlkeld, and is acquainted with the lines and corners of her land since the year 1798; this deponent has

always understood, and believes, that both the land of Ann and John Threlkeld, and also that of the heirs of *John* Proctor, deceased, is contained in the tract of 1666⅔ acres entered in the name of John Walden. The 25 acres by John of Ann Threlkeld, and the 25 acres purchased by him of James, was conveyed to John by Lewis Craig, and the deed is filed herewith. The bond from Lewis Craig to Daniel Threlkeld, and assigned to John, is also filed herewith, this deponent being a witness to it. And this deponent was with the surveyor, Morrison, at the time he surveyed it in this suit. This deponent, being interrogated, says, he has no interest at all in this suit; he married the sister of the defendant, John Threlkeld, daughter of the defendant Ann, September 11th, 1824. HENRY BRUCE.

FLEMING CIRCUIT, *sct:*

September term, 1824. The foregoing deposition was sworn to in open court.

Attest: L. D. STOCKTON, *C. F. C. C.*

The deposition of John Williams, of lawful age, taken on the 1st Monday in November, 1805, at the house of John Faris, in the county of Fleming, and to be used in evidence in the suit in chancery depending in the Mason circuit court, in which Alexander K. Marshall is complainant, and Thomas Jones is defendant. The deponent, being first sworn, says, that in 1783 he first travelled the road which from the Lower Blue Licks, by Mayslick, and does not recollect having travelled the road crossing Lee's creek all the way from Limestone to the Lower Blue Licks till 1786; in that year he travelled the road from the mouth [of] Limestone to the Lower Blue Licks, passing the North fork of Licking at the mouth of Lee's creek. The road was then old, and had many marks of tomahawks and painted pictures, which this deponent supposed to have been made by Indians; the said road was called a war road, but it was sometimes travelled by buffaloe, yet it was not so much trod by buffaloe as the road leading by Mayslick; he says further, *says*, that the road crossing the North fork of Licking, at the mouth of Lee's creek, had the appearance of those roads which he has since seen on the other side of and called the War road; this deponent says, further, (being interrogated to that point,) that he was acquainted with the road which crossed the North fork of Licking at the mouth of Mill creek, about the year 1786; that at early days, to wit, about that year, he has followed that road from the North fork to the forks of Mill creek, where the road forked; the right hand of the fork lead up the right hand fork of Mill creek, and went over to a lick of Johnson's fork of Licking, thence on to the Upper Blue Licks; the left hand fork of the road went over to Fleming waters, to the spring where Stockton lives, and was lost in the knob; and this deponent does not recollect of any right hand fork of this said road below the forks of the said Mill creek as above described. He says he has travelled from Mayslick to the Upper Blue Licks, and does not remember of having crossed a road of any size.

Question by Thomas Young. When were you first at Mayslick?

Answer. [I] think in the spring of the year 1783.

Question. Was there any spring there then?

Answer. I do not recollect of any spring but the lick; I was only travelling, and looked for no spring.

Question. Where did you understand May's spring was?

Answer. I never heard of May's spring till of late days; I have lately heard Shotwell lives at May's spring. And further this deponent saith not. (Signed,) JOHN WILLIAMS.

The above deposition, subscribed and sworn to before me, a justice of peace, for Fleming county, November 4th, 1805.

Signed WM. KENNAN.

A copy.—Attest: THOS. ARNOLD, *C. B. C. C.*

The deposition of Lewis Marshall, of Woodford county, Kentucky, taken at the office of the clerk of the circuit of Fayette county, in Lexington, on the 29th day of December, 1824, to be read as evidence in the suit in chancery, depending in the Fleming circuit court, wherein Thomas Bodley, Robert Pogue, &c., are complainants, and Ambrose Walden, John Walden's heirs, *Hezekiah* Proctor's heirs, &c., are defendants; taken by the complainants.

This deponent, being duly sworn, and of lawful age, deposeth and saith, that on the 15th day of February, 1799, as well as he can now ascertain, he witnessed a deed from Robert Rutherford, John Peyton, and Charles Magill, to Thomas Bodley, James Hughes, Robert Campbell, and Robert Pogue, for ten thousand acres of land in Mason and Fleming counties, which deed is dated the 15th day of February, 1799, and is now before him, and is also witnessed by James Brown, John Arthur, and McGregor, and he is confident that the names of Robert Rutherford, John Peyton, and Charles Magill, signed to said deed, was wrote by and is in the handwriting of Buckner Thruston, then of Lexington, Kentucky, and now a judge in the District of Columbia, their attorney in fact, who acknowledged the same in the presence of this deponent to be their act and deed; and this deponent further saith, that he shortly after, say about the 20th of February, 1799, took the said deed to Washington, Mason county, Kentucky, proved the execution thereof before the clerk or deputy clerk of the Washington district court, and left the same with said clerk for record. He further states, that he is acquainted with the handwriting of James Brown, John Arthur, and McGregor, and he verily believes that their names as witnesses to said deed *is* in their respective handwriting; that he had understood and believes, that John Arthur and McGregor have been dead many years, and that James Brown is now without the limits of the United States as Minister to France; he further states, that the deed was signed and witnessed by the subscribing witnesses in his presence.

LEWIS MARSHALL.

The deposition [of] James B. January, taken at the same time and place, to be read in the same suit.

This deponent, being of lawful age, and duly sworn, deposeth and saith, that he is well acquainted with the handwriting of Buckner Thruston, James Brown, Lewis Marshall, John Arthur, and McGregor; that he has seen and examined the deed described in the foregoing deposition of Lewis Marshall, which is now before him, and he is confident that the signatures of Robert Rutherford, John Peyton, and Charles Magill *is* in the handwriting of Buckner Thruston, their attorney in fact, as stated in said deed; and that the names of the witnesses thereto—*is* in the proper handwriting of the said witness respectively.

JAS. B. JANUARY.

FAYETTE COUNTY, *sct:*

The foregoing depositions of Lewis Marshall and James B. January were this day subscribed to before me, a justice of the peace for said county of Fayette, at the time and place stated, and to be read as evidence in the suit mentioned in the caption.

Given under [my] hand this 29th day of December, 1824.

WM. WEST, *J. P.*

Upon the back of which depositions is the following, to wit:

These depositions may be used upon the trial of the case to which they relate, without proof of notice of taking them, so far as I am concerned for the defendants.

CHAMBERS, *attorney of some defendants.*

STATE OF KENTUCKY, *Fleming county, sct:*

I, Leakin D. Stockton, clerk of the court for the circuit aforesaid, certify, that the foregoing pages and the annexed plat and report of survey contain a full, true, and complete transcript of the record and proceedings had in the suit therein named, as the same remains in my office.

In testimony whereof I hereunto subscribe my name, and affix the [L. S.] seal of my office at Flemingsburg, the 24th day of October, 1826.

L. D. STOCKTON.

FLEMING CIRCUIT, *ss:*

The fee for this record is $35 00.

Att: L. D. STOCKTON, *C. F. C. C.*

FLEMING CIRCUIT, *sct:* *September term*, 1828.

THOS. BODLEY and Rob't Pogue, compl'ts, against AMBROSE WALDEN and others, defendants. } In chancery.

At a court continued and held for Fleming circuit, at the court-house thereof, in the town of Flemingsburg, on Friday, the 5th day of September, 1828:

The defendant, Ambrose Walden, produced his answer, and asked leave of the court to file the same; which leave is given him upon his giving bond, with Robert Wickliffe his security, in the penalty of five

hundred dollars, conditioned to pay as well the costs that have already accrued in this suit, as also the costs that may hereafter accrue, in case said Walden is not successful; which bond was accordingly executed and the answer filed; and it is ordered, that this suit be reheard. And the said Walden produced in court his petition to remove the said cause to the United States circuit court for the district of Kentucky. And the said Walden proved, by William P. Fleming, that the land in controversy was of the value of four thousand dollars; which motion for a removal of the papers, is continued until the next term of this court, until which time this cause is continued.

The answer of Ambrose Walden, referred to in the foregoing order, is as follows, to wit:

The answer of Ambrose Walden, of Fauquier county, Virginia, to a bill of complaint and an amended bill, filed by Thomas Bodley, James Hughes, and Robert Pogue, and an additional bill of Thomas Bodley, all filed in the circuit court of Fleming, in chancery, against the defendant and others.

This defendant, saving and reserving to himself all exceptions, and the benefit of every exception, to the many errors and uncertainties of the complainants' bills, for answers thereto, or unto so much thereof as it is material for him to answer unto, he answereth and saith: That he can neither admit nor deny that the entry referred to in the bill, and said in it to have been made in the names of Henry Crutcher and John Tibbs, on the 17th day of October, 1783, with the surveyor of Fayette county, was made, as is alleged by the complainants, nor that a survey was legally executed, and a patent obtained thereon, as set forth by them; nor that the legal title to the land claimed by the complainants is vested in them.

This defendant also cannot admit that the land spoken of has been surveyed conformable to entry, according to law, and possesses all the requisites of a good and valid claim; these matters are subject, upon which it is the peculiar province of the court to decide, and to the court the defendant submits them.

This defendant further answering sayeth, that on the 22d day of May, 1780, he made an entry with the proper surveyor in the words and figures following: "Ambrose Walden enters 1,333, &c.," as by reference to an attested copy thereto will more fully appear, which he makes a part of this answer; that in the year 1776 a certain Jacob Johnson, having made a settlement and raised a crop of corn upon land in the district of Kentucky, entitled himself to the claims bestowed by law in such cases, and having died, Peter Johnson, heir at law of the said Jacob Johnson, on the 7th January, 1780, obtained a certificate, of which an attested copy is annexed; that on the 21st of February, 1780, the said Peter Johnson, heir at law of Jacob Johnson, for the purpose of fully assisting the right acquired by the said Jacob Johnson, and the said certificate, made with the proper surveyor, his entry bears date February 21st, 1780, for 400 acres of land; of which entry an attested copy is also annexed, and made a part of this answer.

This defendant sayeth, that the settlement and pre-emption of Jacob Johnson, mentioned in the entry of this defendant, and the settlement and pre-emption of Peter Johnson, heir at law of Jacob Johnson, are the same, although differently described; that their identity is obvious, from the exhibits above referred to, and that they were universally so known and understood.

This defendant denies that the entries in the bill referred to are either vague or uncertain, or that they have been illegally and improperly surveyed; he sayeth, that, at the period when the entries and surveys were made, the places named therein were well known and ascertained by the terms employed by the entries and surveys for their description; that there was no Buffalo road then leading from the Upper Blue Lick to Limestone; that the only Buffalo road lead from the Lower Blue Lick to Limestone; that there were three Buffalo roads then leading, from the Lower Blue Lick in the direction of Lexington; and that the upper road of the three lead directly from the Lower Blue Lick to Limestone.

The defendant further answering saith, that he is not one of the heirs of John Walden, deceased, and that he hath no interest in the tract of land of which the entry and survey is said in the bill to have been made by him, and for which a patent was granted to heirs.

This defendant saith that a patent, long anterior to that of the complainants, was granted to him for the quantity of land specified in the bill; that the patent was founded upon a survey made conformable to entry, and that the said entry, survey, and patent are not only prior in time to the entry, survey, and patent, respectively, of the complainants, but the same are certain and lawful.

This defendant also saith that an injunction is depending in the district court of the United States for the district of Kentucky, in which Thomas Bodley and Robert Pogue, the complainants in this cause, and this defendant, are parties, to which this defendant refers, and makes his answer in the same a part of this answer, so far as the same, and the exhibits set forth by him, may be deemed pertinent, of which copies are annexed.

This defendant neither admits nor denies the allegations in the bill to which he has not specifically responded; further he saith not, but prays to be hence dismissed, &c.

his
AMBROSE ✕ WALDEN.
mark.

STATE OF VIRGINIA, *Fauquier county:*

This 26th February, 1828, Ambrose Walden, above named, appeared before me, a justice of the peace for the county and State aforesaid, and made oath that the foregoing answer, so far as it depends upon his own knowledge, is true, and, so far as it depends upon the knowledge of others, he believes it to be true.

WM. R. SMITH.

VIRGINIA, *Fauquier county, to wit:*

I, John A. W. Smith, clerk of the county court of the said county, do hereby certify, that Wm. R. Smith, before whom the within affidavit appears to have been made, is a justice of the peace in and for the county aforesaid, duly commissioned and qualified as such, and that full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof I have hereunto set my hand, and affixed the [SEAL.] seal of the said court, on the 26th day of February, in the year of our Lord one thousand eight hundred and twenty-eight, and in the 52d year of the commonwealth.

JOHN A. W. SMITH.

VIRGINIA, *Fauquier county, to wit:*

I, Wm. Stuard, eldest and presiding magistrate in and for the county aforesaid, do hereby certify, that John A. W. Smith is clerk of county court of the said county, and that the foregoing certificate and attestation [of] the said clerk is in due form of law.

Given under my hand and seal this 27th day of February, 1828.

WM. STUART. [SEAL.]

The exhibits referred to in the foregoing answer were copied in a former part of this record, except those referred to in the latter part of this answer, which were never filed.

The petition of Ambrose Walden, referred to in the foregoing order, is as follows, to wit:

The petition of Ambrose Walden to the honorable the judges of the Fleming circuit court of Kentucky respectfully showeth, that Thomas Bodley, James Hughes, and Robert Pogue filed their bills and amended bill in the said circuit court, and that since the same were filed an additional bill has been filed by the said Thomas Bodley, in which bills your petitioner, and other persons unknown, and said to be heirs of John Walden, Dale Carter, Lucius Chapin, Mrs. Ann Threlkeld, John Threlkeld, and Price, John, Thomas, William, Jeremiah, Rachel, and Lurinda Proctor, infant heirs and representatives of Jeremiah Proctor, deceased, are defendants; that in the suit in which the said bills were filed a decree has been taken as confessed against your petitioner; that the complainants are citizens of the State of Kentucky; that your petitioner is a citizen of the State of Virginia, and a defendant in the suit above mentioned; that the other defendants above named are also citizens of the State of Kentucky; that the land sought to be recovered from your petitioner in the suit above referred to exceeds in value the sum of five hundred dollars; that it is cognisable by the courts of the United States; he therefore respectfully petitions, that he may be permitted to file his answer in the said suit, and that the same may be removed from the circuit court in chancery for the county of Fleming, into the circuit court of the district for the United States, for the State of Kentucky.

his
AMBROSE ✕ WALDEN.
mark.

STATE OF VIRGINIA, *Fauquier county:*

This 26th day of February, 1828, Ambrose Walden, the petitioner above named, appeared before me, a justice of the peace for the county aforesaid, and made oath to the facts contained in the petition on the opposite side.

WM. R. SMITH.

At a court continued and held as aforesaid, on Wednesday, the 4th day of March, 1829, came the parties, by their attorneys, and, on motion of the defendant, Ambrose Walden, it is ordered that this suit be removed to the circuit court of the United States, for the Kentucky district.

STATE OF KENTUCKY,
Fleming circuit, sct:

I, Leakin D. Stockton, clerk of the court for the circuit aforesaid, certify, that the foregoing 6 pages contain true and correct copies of the originals as fully as the same remains in my office.

Given under my hand, this 14th day of May, 1829.

L. D. STOCKTON.

MASON COUNTY, *sct:*

THOS. BODLEY & ROBERT POGUE'S, &c., complainants, against AMBROSE WALDEN, defendant. } In chancery.

DUNCAN'S heirs, complainants, against Same, defendant. } In chancery.

CLARKE'S heirs, complainants, against Same, defendant. } In chancery.

In obedience and pursuance to an interlocutory decree of the United States circuit court, seventh circuit, district of Kentucky, rendered herein, directed to the surveyor of the county aforesaid, I met the parties above named agreeably to notice on the 11th day of December, 1833, upon the land in controversy, and proceeded thence to execute the survey as directed in said decree, beginning at the nine mile point from the Lower Blue Licks, on the upper trace leading to Limestone, shewn by Nathaniel Hixon, and represented on the plat hereto prefixed by the letter (C;) and running thence along said trace N. 52° 35′ E., 253 poles, to a stake in said trace, at fig. (1.) Upon this base (being the general course of that part of said trace on which it lies) I have surveyed and laid down Peter Johnson's settlement survey of 400 acres, in a square represented by C, 1, 2, 3.

C, 4, 5, 6, red dotted lines, Peter Johnson's settlement survey of 400 acres, as originally surveyed, shown by said Hixson.

1, 2, 3, 4, black lines, Peter Johnson's pre-emption survey of 1,000 acres, laid down adjoining his settlement survey, by lines equidistant therefrom.

1, 2, 5, 6, 11, that part of the same survey as originally surveyed as comes within the controversy.

7, 8, 9, 10, red lines, the defendant's entry of 1,333 acres, laid down in an equilateral square, making the centre of the S. E. line of Johnson's settlement the centre of said Walden's N. west line.

7, 8, 9, 10, black lines, said defendant's entry of 1,333 acres, as originally surveyed, shewn on a former occasion by Gen. Simon Kenton and said Hixson.

2, a, b, c, black dotted lines, said defendant's survey of 1,333 acres, laid down by order of John Triplett from a copy of the patent, beginning at the N. E. corner of Johnson's pre-emption, at fig. 2.

12, e, e, e, e, e, e, e, John Triplett's farm.

8, f, g, h, i, 7, the land covered in common by Walden's survey, as originally run out, and as surveyed under the decree aforesaid, containing 1,144 acres, 2 roods, and 32 poles, and bounded as follows, to wit: Beginning at a stake six feet north of a white oak tree, corner of Walden's, as last surveyed, represented at 8; and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey, in Tibbs' lane, at f; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E. from said Walden's original corner, near Proctor's, at g; thence with the decreed line S. 52° 35′ west, 95 poles, to a stake in another of said Walden's old lines, in cleared land, at h; thence with the old line N. 70° W., 220 poles, to a stake at i, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buckeyes and a sugar tree, at 7; and thence N. 52° 35′ east, 461 poles and 21 links, to the beginning.

7, 8, K, 4, that part thereof lying with Johnson's pre-emption, as surveyed under the decree aforesaid, and also within the survey as originally made, contained 317 acres 1 rood and 38 poles, and bounded as follows, to wit: Beginning at two buckeys and a sugar tree, corner of said Walden's decreed survey, at 7; and running thence with that line N. 52° 35′ E., 461 poles and 21 links, to a stake, 6 feet north of a white oak, at 8, another of the decreed corners; thence with that line S. 37° 25′ E., 109 poles and 16 links to a stake, near a small elm, at K, in Johnson's decreed line; thence with that line S. 52° 35′ W., 461 poles and 21 links, to a stake near a field, at 4; and then N. 37° 25′ W., 109 poles and 16 links, to the beginning.

7, 8, K, 1, that part thereof within Johnson's pre-emption, as originally surveyed, containing 334 acres 3 roods and 8 poles, and bounded as follows, to wit: Beginning at two buckeyes and a sugar tree, one of Walden's decreed corners, at 7; and running thence with a line thereof N. 52° 35′ E., 461 poles and 21 links, to a stake six feet north of a white oak, another of said corners, at 8; thence with another of the decreed lines S. 37° 25′ E., 108 poles and 20 links, to a stake in

the old line, 21 links N. 37° 25′ W. from the small elm tree at K; thence with the old line S. 51° W., 461 poles, to a stake on a ridge at the fig. (1,) in Walden's decreed line; thence with that line N. 37° 25′ W., 23 poles, to the beginning.

11, 12, 6, that part thereof lying with the settlement survey, as originally run out, containing two acres 3 roods and 10 poles, and bounded as follows, to wit: Beginning at a stake near a small branch, where the decreed and original lines of Johnson's settlement intersect, at 11; and running thence with the decreed line S. 52° 35′ W., 228 poles, to a stake, in Joseph Duncan's line, at 12; thence with the old line S. 35¾° E., 4 poles, to a stake in said Duncan's pasture, the place at which the old corner stood, at 6; and thence N. 51° 15′ E., 228 poles, to the beginning.

1, 6, m, n, 4, represents 7 acres 2 roods 25 poles of land, lying within Walden's, as originally surveyed, and outside of Johnson's decreed survey, (upon pre-emption warrant,) and within his claim as first surveyed, and bounded as follows, to wit: Beginning at three white oaks, said Johnson's S. W. corner of his original survey, at 6; and running thence with a line thereof N. 51° E., 31½ poles, to a stake in Walden's decreed survey, on a ridge, at 1; thence with that line north 57° 25′ west, 13 poles, to Johnson's decreed line, a stake near a fence, at 4; thence with that line south 52° 35′ west, 5½ poles, to a stake, said Johnson's decreed corner; thence with another of his lines N. 37° 25′ W., 133 poles, to a stake in Walden's old line, S. 21¾° west, 9 poles, to another stake in said meadow, at m, in Johnson's old line; and thence with that line S. 37° 25′ E., 143, poles, to the beginning.

3, a, b, 12, represents 2 acres 3 roods and 22 poles of land lying within Walden's original survey, outside of Johnson's settlement, as laid down under the decree, and within the settlement, as originally surveyed, and bounded as follows, to wit: Beginning at a stake in Duncan's pasture, at 3, corner of said settlement as decreed, and running thence by a line thereof N. 37° 25′ W., 85 poles, to a stake in Walden's first survey, at a; thence with said line south 21¾° west, 4½ poles, to a stake in said Johnson's settlement line, as first run out, at b; thence with that line south 36° east, 84 poles, to a stake in the decreed line of the pre-emption, at 12; and thence with that line north 52° 35′ east, 6 poles, to the beginning.

2, d, c, 5, represents 21 acres 2 roods and 36 poles, within Walden as aforesaid, outside of Johnson's settlement survey, as laid down under the decree, and within his settlement as originally surveyed, and bounded as follows, to wit: Beginning at a stake standing south 53° east, 1½ pole, from a large sugar tree, marked cornerwise, at 2, corner to the settlement under the decree, and running thence with a line thereof north 37° 25′ west, 219 poles, to a stake in Nathaniel Hixson's field, in Walden's original line, at d; thence with his line south 86° east, 31 poles, to a stake in said Johnson's original line, at C; thence with that line south 39¼° east, 191 poles, to a willow, oak tree, standing and marked, and a fallen honey locust and a hackberry stump, said John-

son's original corner, at 5; and thence south 40½° east, 18 poles, to the beginning.

3, 5, e, o, represents fifteen acres within Walden as at first surveyed outside of Johnson's pre-emption, as laid down under the decree, and within his pre-emption as originally surveyed, and bounded as follows, to wit: Beginning at an iron wood and white oak, corner to the pre-emption, as decreed at 3; thence, with the original line, north 51° east, 22 poles, crossing a branch to a white , Johnson's old corner at 5; thence, by a line of the original survey, north 57° 25′ west, 102½ poles, to Walden's line at e, a white oak and hickory, John Triplett's corner; thence, with Walden's line, north 86° west, 39 poles, to a stake in said Johnson's decreed line at o; and thence, with that line, south 37° 25′ east, 136 poles, to the beginning.

The heirs of Robert Pogue produce no title papers on the occasion of this survey, neither did the heirs of Thomas Bodley, nor Joseph Duncan, nor any of the parties complainants except John Triplett, who produced deeds and other title papers for the land in controversy claimed by him.

ATHELSTON OWENS,
Surveyor of Mason county.

[For plat, see original.]

Notes of reference.

A, B, C, D, E, F. In drawn lines, Bodley's 16,000 acres.

A, G, H. In ditto, 10,000 acres.

F, G, K, I. Bodley & Hughes' 3,000 acres.

Figure 1, 2, 3, 4. Represents Jacob Johnson's settlement and pre-emption as surveyed.

5, 6, 7, 8. Ambrose Walden's 1,333 acres.

9, 10, 11, 12, 8, 7. John Walden's 1,666 acres.

All the above surveys [are] laid down from a plat made out in the suit of Bodley & Co. against John Taylor.

15. Represents nine miles by the meanders of the Buffalo road, from the upper Blue Lick, past A and D; and, at the request of the complainants, I laid down 15, 16, 17, 18, 400 acres, that the complainants contend would answer Jacob Johnson's settlement of 400 acres; and 19, 20, 21, 22, would represent said Johnson's pre-emption of one thousand acres around his settlement; and 21, 22, 23, 24, would represent Ambrose Walden's thirteen hundred and thirty-three acres, joining Johnson on the east.

22, 23, 24, 25, 26. Would represent John Walden's sixteen hundred and sixty-six acres, joining Ambrose Walden on the southeast, and running east and southeast for quantity.

D. The Mud Lick on the Mud Lick branch of Johnson's creek.

R. Represents May's Lick.

B. Stockton's spring.

A. The forks of Wilson's run, and Boon's and McIntire's camp.

JOSEPH MORRISON,
Sur. Flem. county.

5th September, 1823.

By the consent of the parties I amended the foregoing survey, by laying down [to] the commissioners (David Morris and D. V. Payne's) and to Lewis Craig, *of* the one-third of John Walden's sixteen hundred and sixty-six and two-thirds acres, being in two tracts, one tract containing one hundred and eighty-five acres, and represented on the plat by the figures 7, 9, 23, and black dotted line to 28, 9, and to the beginning; the other tract, containing three hundred and seventy acres, and represented by the figures 29, 30, 31, 32, 33, 34, and to the beginning.

JOSEPH MORRISON,
Sur. Flem. county.

At the request of the defendants I proceeded, on the eleventh and twelfth of August, eighteen hundred and twenty-three, to amend the foregoing survey, and, by the direction of the defendant's counsel, I laid down John Threlkeld's bond, being the seventy-two acres formerly owned by Daniel Threlkeld, the boundaries of which were shown to me by Henry Bruce and Rolly S. Porter, and is represented on the plat by the red figures 1, 2, 3 4, and bounded as follows: Beginning at figure 4, a fallen walnut; thence south 2° east, 94$3\frac{1}{2}$ poles, passing by an ancient marked line tree to 3, a white oak and hickory, the hickory anciently marked as a corner to suit said 72 acres, and the white oak anciently blazed to suit the same; thence east, passing near an ancient marked line 89 poles, and fell $2\frac{1}{2}$ poles to the right of 2, a honey locust in Bruce's field, near which stands an elm; thence north 2° west, passing near an old marked line, 101 poles, and fell 5 poles to the left of 1, a hickory stump, shown by Rolley S. Porter for a corner of said 72 acres; thence north 68° west, 105 poles, to the beginning.

1, 4, 5, and red dotted line to figure 1, represents the improvements on said 72 acres.

(2) 2, 3, 6, 7, 8, 9. Represents Ann Threlkeld's deed from Lewis Craig for 100 acres, and bounded as follows: Beginning at figure 2, a honey locust and elm, shown by Henry Bruce for Ann Threlkeld's corner; then south $20\frac{3}{4}$° west, $44\frac{4}{10}$ poles to 9, (a large white oak, and an ash anciently marked,) as a corner to suit Ann Threlkeld's said deed, and shewn by Henry Bruce for her corner; thence north 76° west, $219\frac{1}{2}$ poles to 8, a blue ash and buckeye, anciently marked as a corner pointing to the lines of Ann Threlkeld's said deed, and shown by Henry Bruce for her corner; thence north $20\frac{1}{8}$° east, passing with an anciently marked line where the land was not cleared, 130 poles to 7, a stake in cleared land; thence, by protraction, south 68° east, 97 poles to 6, a stake in the Blue road; thence south 2° east, $99\frac{1}{2}$ poles to 3, a hickory and white oak anciently marked as a corner, the hickory marked and the white oak blazed pointing to the lines of deed; thence north $88\frac{1}{2}$° east, 98 poles, to the beginning.

(2) 3, 6, 7, 10, 11, 12. Represents Ann Threlkeld's improvement, and her dwelling-house near 13.

(3) 4, 6, 7, 13, 14, 15. John Threlkeld's fifty acres from Lewis Craig, laid down from survey as follows: Beginning at 7, a stake, Ann Threlkeld's corner; thence south 20½° west, 24 poles to 13, a stake; thence north 71¼° west, with an ancient marked line, 65 poles to 14, two sugar trees; thence north 20° east, with an old marked line, 68 poles to 15, a dogwood and hickory, marked as a corner pointing to the lines of said fifty acres; thence south 68° east, 145 poles, with an ancient marked line, to 4, a fallen walnut; thence south 2° east, 44 poles to 6, a stake near a small drain; thence north 68° west, 97 poles, to the beginning. The boundaries all around *was* shown to me by Henry Bruce as the boundaries of John Threlkeld's said fifty acres from Lewis Craig.

(3) 4, 6, 7, 13, 17, 16. Represents John Threlkeld's improved or cleared land on said fifty acres, and his dwelling house at E. 4, 6, 7, 23. That part of John Threlkeld's aforesaid fifty acres that he got of Ann Threlkeld. 13, 14, 15, 23. That part of John Threlkeld's aforesaid fifty acres that he got of James Threlkeld.

(4) 19, 18, 19, 20. Represents Mary Thomas and the heirs of Jeremiah Proctor's 150 acres from survey, as follows: Beginning at 9, a large white oak and ash, anciently marked as a corner pointing to the lines of the said 150 acres; thence north 76° west, 205½ poles, to 18, a sugar tree, and a large red or black oak, anciently marked as a corner pointing to the lines of said 150 acres; thence south 19° west, 122 poles, with an old marked line, to 19, a box elder, marked as a corner to suit said 150 acres; thence south 70½° east, with an old marked line where the land is not cleared, 202 poles, to 20, a pea locust and white oak, marked as a corner; thence north 20° east, with an ancient marked line, 143 poles, to the beginning; which includes 7 or 8 acres of Lucius Chapin's land.

21, 18, 19, 22, and red dotted line to 21, represents the improvement on said 150 acres.

▭ []. represents Lucius Chapin's two lots of ground.

JOSEPH MORRISON, *S. F. C.*

Notes of reference.

B, L, represents the Lower Blue Licks.

O, the mouth of Limestone creek, at Maysville.

B, L, and dotted line past M, N, and to O, the middle Buffalo road, from the Lower Blue Lick to the mouth of Limstone.

B, L, and dotted line, past P and R, Mayslick, and to O, represents the Upper Buffalo road from the Lower Blue Lick to the mouth of Limestone. Both of said Buffalo roads laid down from a survey I took of them in the suit of A. K. Marshall against Parker et al.

B, L, and dotted lines, past W to X, a Buffalo road laid down from a plat in the suit of Bodley, &c., vs. J. Taylor.

U, B, L, the Upper Blue Licks.

T, the mouth of Cabin creek.

U, B, L, and dotted line, past A, B, C, and to T, a Buffalo road from the Upper Blue Licks to the mouth of Cabin creek, by the way of Stockton's spring, and mouth of Indian creek and lick, laid down from notes taken of said road by Elias Hood.

U, B, L, and dotted line, past A and D, the Mud Lick.

E and F, the mouth of Mill creek and to G, a Buffalo road, from the Upper Blue Lick, and laid down from a survey I took of it at the request of the complainant, Bodley; the road shown to me by Maj. Jno. McIntire, I took a survey of it from A to G.

JOSEPH MORRISON, *S. F. C.*

Here follows a transcript of the record and proceedings had in the case of—

JOHN DEN, on dem. A. Walden,
against
CRAIG and CHAPIN.

Which is in the words and figures following, to wit:

Pleas before the honorable Harry Innis, judge of the district court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c., for that, to wit, that whereas Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, in Mason county, in Kentucky district aforesaid, had devised and granted, and to farm let, to the said John Den, four dwelling houses, twenty out houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease to the full end and term of ten years, from thence next ensuing, and fully to be *complete* and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still

keeps out, the said John Den so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and therefore he brings suit, &c.

JOHN DOE,
RICHARD ROE,
Pledges, &c.

WM. CLARKE, *for plaintiff.*

I am informed that you are in possession of or claim title to the premises in the declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the said premise, do advise you to appear on the first day of next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there by rule of said court cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession. Your loving friend,

RICHARD FEN.

28*th January*, 1799.

BOURBON COUNTY, *sct:*

On the 22d day of February, 1797, came Thomas McGlanten, before me, the subscriber, one of the justices of the peace for said county, and made oath, that on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Amzel Chapin, he being tenant in possession of part of the premises in the said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice to the wife of Charles Rector, one other tenant in possession of other part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear by some attorney of the court of the United States, for said district, the next ensuing term, there would judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear on the first day of the next term and cause themselves to be made defendants

herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, (they having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term of said court, in the year one thousand seven hundred and ninety-eight, the following order was made herein, to wit:

On motion it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Amzel Chapin, be made defendants to this suit instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial; and it is further ordered that if upon the trial of the issue a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them; whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agreed to insist upon the title only at the trial; and the said defendants came and defend the force and injury, when and where, &c., and say that they are in no wise guilty of the trespass in ejectment, in manner and form as the plaintiff against him hath complained, and of this they put themselves upon the country; and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Milus W. Conway do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, report all matters of fact specially, and *and* return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor to remove force, if any should be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the court aforesaid, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court, by consent of the parties herein, by their attorneys:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 20th day of November, one thousand seven hundred and eighty-six.

The said Walden and Simon Kenton executed the agreement, marked A, respecting the locating of said lands; the said agreement is made part of this cause.

The defendants are in possession of that part of the tract, marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the agreement A, and the endorsement thereon, and a

division thereof made as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of *of* land, marked on the plat as aforesaid by the letters E, G, C, F, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WILLIAM CLARKE,
Attorney for Plaintiff.
THOMAS TODD,
Attorney for Defendants.

And the court having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Amzel Chapin, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of terms aforesaid, returnable to the next court.

The following are the exhibits made part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners, appointed by the worshipful the court of Mason [county] aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land, containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north twenty-two [degrees] east, with the old line, one hundred and fifty-five poles, to two white ashes and sugar tree; thence north sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks, in Johnson's line; thence south fifty-one degrees west, with Johnson's line, one hundred and sixty-eight poles, to three white oaks, in John Walden's line; thence to the beginning, containing three hundred and twenty acres.

To have and to hold the said quantity of three hundred and twenty acres, to him, the said Lewis Craig, his heirs and assigns, forever, free

and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden. Also divided the said tract of land, as follows:

Beginning at two white oaks and sugar tree, in John Walden's line, and corner to Lewis Craig; thence north twenty-two [degrees] east, three hundred and seventy-five poles, to a red oak and honey locust; thence north sixty-eight [degrees] west, two hundred and sixty poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line south thirty-nine [degrees] east, one hundred and twelve poles, to two buckeyes and white oak, east corner to said Johnson's; thence south fifty-one [degrees] west, three hundred and forty poles, to a walnut and two red oaks, corner to Lewis Craig; thence south sixty-one [degrees] east, three hundred and twenty poles, to the beginning.

To have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c., forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, 1797.

This division of land between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: T. MARSHALL, JR., *M. C.*

B.

Articles of agreement, made and done this 1st day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Ken-

ton, respect being held to quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON + KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of—
ANGUS CAMERON,
JOSEPH CAHITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON.
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres, in the name of William Nelson; John Craig's interest is only given up.

December 28th, one thousand seven hundred and ninety-three.

ROBERT JOHNSON,
Trustee for John Craig.
ELIJAH CRAIG,
Trustee for John Craig.

[For plat, see original, page 494.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.

Februrary 10th, 1794.

Surveyed for Ambrose Walden one thousand five hundred and fifty-five acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at A, a buckeye and hoop ash stump, shewn for Walden's most northwestwardly corner; thence S. 68° E., 520 poles, to B, two red oaks and honey locusts; thence S. 22° W., 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line N. 61° W., 524 poles, to D, a hickory, red oak, and white oak;

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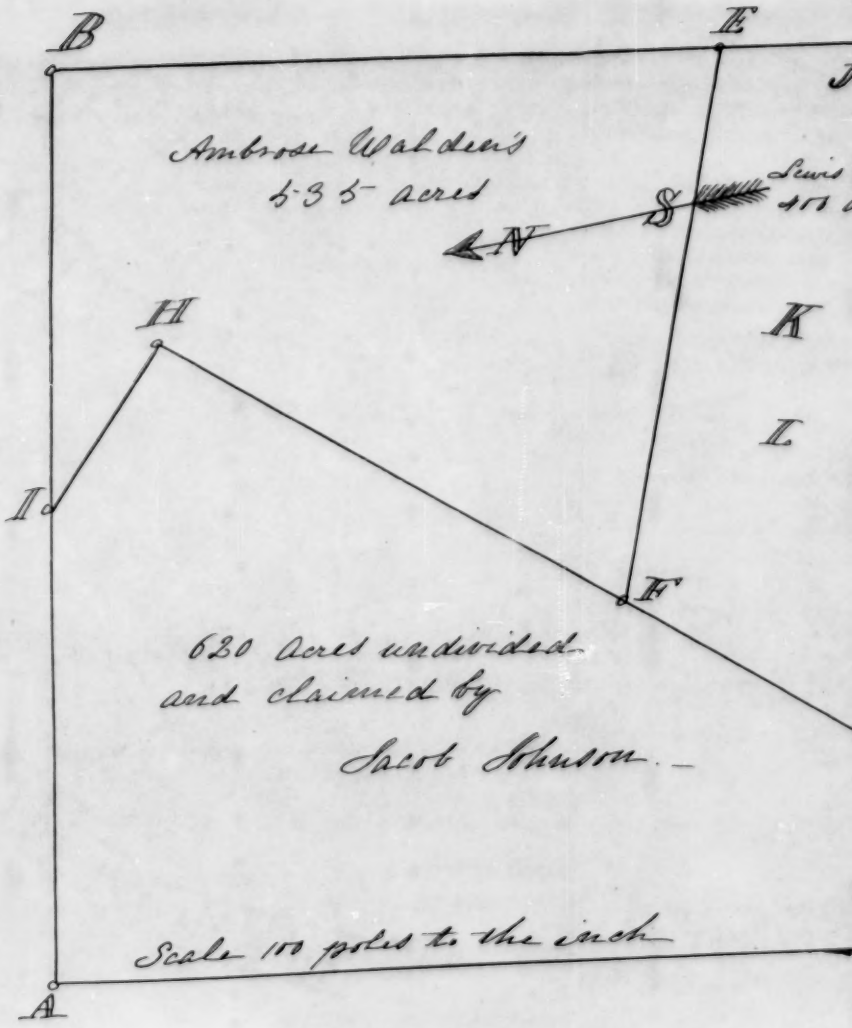
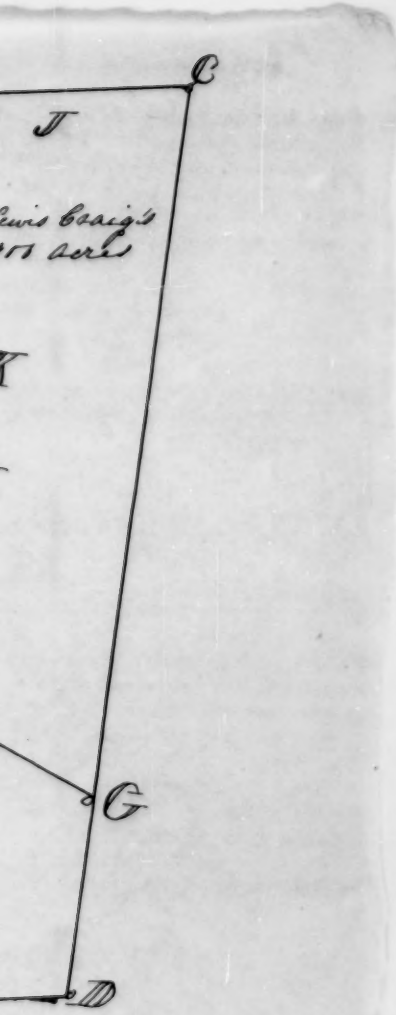
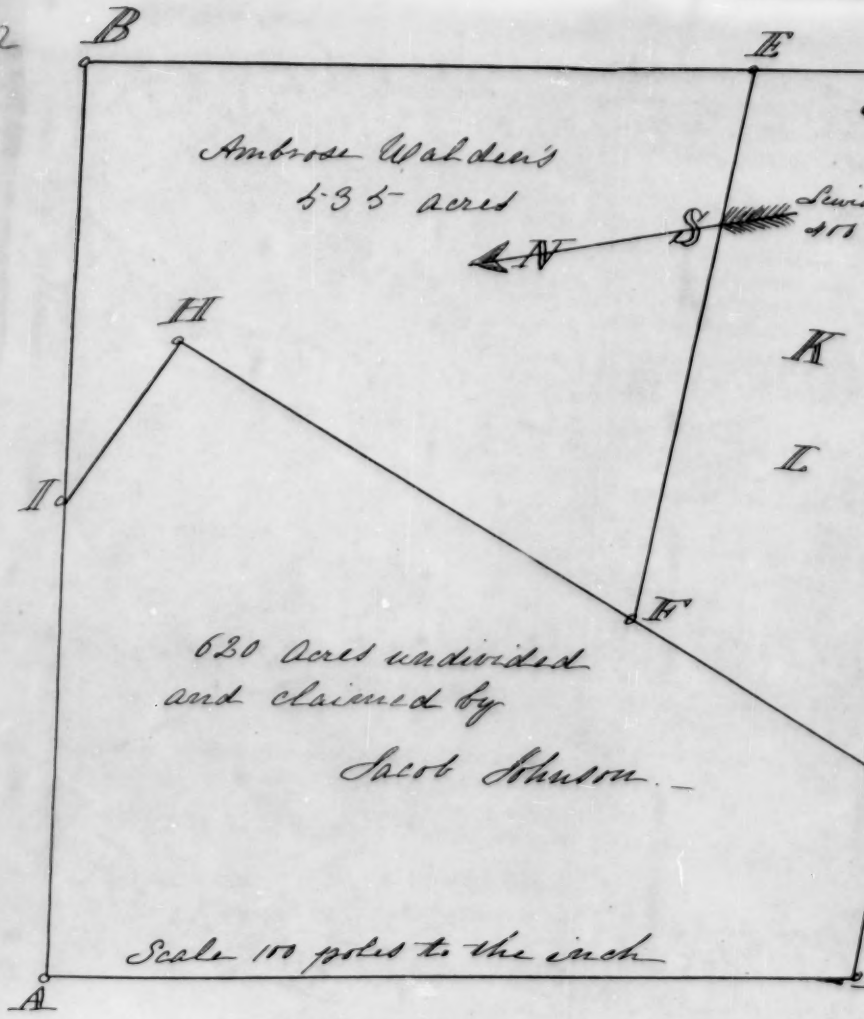
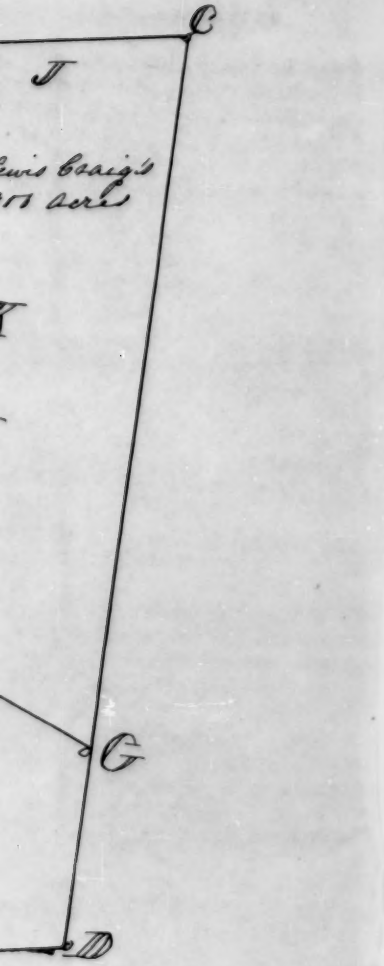

B
E
Ambrose Waldeen's
535 acres
Lewis
S
W
H
K
L
I
F
620 acres undivided
and claimed by
Jacob Johnson.
Scale 10 poles to the inch
A


C
J
Lewis Craig's
G
D

262


B
E
Ambrose Walden's
535 acres
W
S
H
K
I
L
F
620 acres undivided
and claimed by
Jacob Johnson
Scale 10 poles to the inch
A


C
J
Lewis Craig's
171 acres
G
D

thence N. 22° E., 424 poles, to the beginning. Also, divided the above land as follows, to wit: beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence N. 22° E., with Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence N. 61° W., 329 poles, to F, a walnut and two red oaks in Jacob Johnson's line; thence with the same S. 61° E., to the beginning at C; including 400 acres for Lewis Craig, as his equal third part in quality of that part of Ambrose Walden's survey 1333, by patent that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed. Also, divided the above land as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles, to B, a red oak and honey locust; thence N. 68° W., 260 poles, to I, a white oak and box elder in Johnson's line; thence with the same S. 90° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence with his line S. 51° W., 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence S. 61° E., with his line to the beginning at E, including 535 acres for said Ambrose Walden, as his equal 2 thirds in quality of all that part of said Ambrose Walden's survey of 1333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to Wm. Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point.

Surveyed by me— WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued, to wit:

[SEAL.] United States of America, to the marshal of Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately, in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Amzel Chapin, his term yet to come of and in four dwelling houses, twenty out houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns,

from the 15th day of August, in the year of our Lord one thousand seven hundred and eighty nine, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Chapin afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Chapin are convict, as appears to us of record.

Therefore we command you, that without delay you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the third Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereto affixed this fourth day of August, 1800, and of our independence the twenty-fifth.

Teste: THOS. TUNSTALL, *C. K. D. C.*

The above habere facias was returned by A. Walden the 5th day of September, 1811.

And on the 14th day of November, 1811, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Amzel Chapin his term yet to come of and in four dwelling houses, twenty out houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Chapin afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John from his said farm, his said term not being yet ended, and

kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Chapin are convict, as appears to us of record.

Therefore we command you without delay you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed this 14th day of September, 1811, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

This habere facias was returned the 16th of May, 1812, by A. Walden.

And on the 2d day of June, 1812, the following habere facias was issued, to wit:

WALDEN'S LESSEE
against
CRAIG & CHAPIN.

Execution dated 2d June, 1812.

His term yet to come of and in four dwelling houses, twenty out houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason and district aforesaid.

This habere facias was made returnable to August rules, 1812, delivered to Jno. A. Mitchell, who made the following return thereon, to wit:

Stayed by supersedeas; 62 miles travelling.

JNO. A. MITCHELL, *D.*
For R. CROCKETT, *M. K. D.*

Petition of Craig and Chapin.

To the honorable the judges of the court of the United States, for the 7th circuit, for the Kentucky district, respectfully sheweth: Your petitioners, Lewis Craig and Amzel Chapin, that at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden for 4 dwelling houses, &c., on which, since the last term of this court, an habere facias possessionem has been issued against them.

Your petitioners are advised that the issuing the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800,

and there is no record of any execution having issued until September, 1811. No execution ought to have issued after the lapse of a year after the entry of judgment without a scire facias. Runn. on ejectment, 142.

2ndly. The term had expired before the entry of judgment—of course the judgment itself is impeachable; but it is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Runnington on ejectment, 146-'7, 283, 122.

Your petitioners therefore pray that a supersedeas may issue, &c., &c.

J. HUGHES,
For CRAIG & CHAPIN.

UNITED STATES OF AMERICA, *Kentucky district, ss:*

Issue a supersedeas agreeably to the foregoing petition, taking bond and security according to law.

Witness my hand, as judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JOHN H. HANNA, *Clerk U. S. C. C. &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Amzel Chapin, and Thomas Bodley, of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, and administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Lewis Craig and Amzel Chapin have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Chapin *is* defendants, for the possession of 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of woodland, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

Now if the said Craig and Chapin shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Chapin, and Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig or Chapin, in case

the proceeding aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. HUGHES, *his att'y in fact.*

Witness: SAMUEL J. M. MAJOR.

Supersedeas.

[SEAL] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded, that, from all further proceedings on a habere facias, issued from the office of the district court of the United States in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Amzel Chapin are defendants, which habere facias issued on the 2d day of June, A. D. 1812, against the said Lewis Craig and Amzel Chapin, for the possession of 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres arable and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias, before the judges of our seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Amzel Chapin, who have given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them.

We command you to give notice to the said Ambrose Walden, that he be before the judges of our said seventh circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For R. CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term in the year 1813, of the 7th circuit court of the United States, in and for the Kentucky district, the following order was made herein to wit:

The court being now sufficiently advised of and concerning the premises, do order, that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that

the said plaintiff recover against the lessor of the defendant *their* costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term on the 5th of August next ensuing, the following order was made herein, to wit:

This day came the foregoing suit, and moved the court for a rule on the defendants aforesaid to show cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And on the 22d of May, 1819, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, late in the district court of the United States, in and for the Kentucky district, has, by judgment of the said court, recovered against Lewis Craig and Amzel Chapin his term yet to come and unexpired in 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason; therefore, we command you, that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ return to us on the first Monday in July next.

In testimony whereof John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence forty-three.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly; but execution not to go out before the first day of March next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued in this case, to wit:

JOHN DEN, on demise of AMBROSE WALDEN,
against
LEWIS CRAIG and AMZEL CHAPIN.

Execution dated 30th May, 1835.

His term yet to come of and in four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying,

and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff upon this execution any land outside of the locator's part, nor any land within, which is enjoined by the order of December 2d, 1834.

This execution was made returnable to first Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of AMBROSE WALDEN, against AMZEL CHAPIN, (Lewis Craig, the other defendant, having departed this life.)

Execution dated .

His term yet to come [of] and in four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this writ as lies within the following boundary:

Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25′ E., 279 poles, to a stake in a line of Walden's original survey in Tibb's lane, at f; thence with that line S. 20° W., 288 poles, to stake in a lane at the intersection of the decreed line, 82 poles N. 20° E., from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of said Walden's old lines in cleared land, at h; thence with the old line N. 70° W., 220 poles, to a stake i, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buckeyes and sugar tree, at 7, and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning, containing by said survey 1144 acres 2 roods and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th November, , came the parties, by their attorneys, and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than twenty years ago, and it was irregular and illegal to issue any execution on it, without a scire facias first sued out against the defendants, &c. L. Craig is dead, and no execution could regularly issue against the survivor without revival.

3d. There is no judgment upon which, without a revival by scire facias, any execution could regularly and legally issue.

4th. That the execution irregularly and illegally issued on a judgment in operation, and which, from lapse of time, gave no right to the clerk without being revived, to issue the execution or any other.

And the argument of counsel being heard, but the court not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term, to wit, on the 21st of November, the court being sufficiently advised of and concerning the defendants' motion to quash the execution in this case, do consider, that the habere facias which issued in this case on the 18th November instant, be, and the same is hereby, quashed; and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion, the following bill of exceptions was tendered to the court, signed and ordered to be entered, which is as follows, to wit:

Be it remembered, that on the above motion being made in court by the counsel of the plaintiff therein, the counsel of Walden objected to said motion being made, and to *then* being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read and signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared, on the first ground, that the counsel of Walden had before the issuing of the said executions suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection it appeared that the clerk had, on the dissolution of the injunction on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias, unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making of these motions, informed the counsel of both parties, that he would in consequence thereof issue the executions.

That before the adjournment of the court, the day before the motion was made, when the business was disposed of, it was mentioned from the bench, that the court would adjourn to meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether

any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel for the plaintiff in the motion, whose clients had not attended and were absent, that he had understood when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution; yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued; and that he then informed the counsel of Walden that he would on the next day make the motion in court.

On the above state of [the] case, the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And on the second ground of objection, the court was of opinion, that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court when not full was not caused by him either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., against Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rules obtained and motions made in said action of ejectment, to have the said order allowing the said demise to be extended quashed and set aside; and the proceedings and orders of the court in said rule and motion were altogether, with the record of the habere facias, which this motion was made to have quashed, referred to and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion, which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig, before the issuing of the said writ of habere facias, which was admitted by the parties, the court on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated, the counsel of Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled, and the same is allowed.

THOMAS B. MONROE. [SEAL.]

A copy.—Attest: JOHN H. HANNA, *C. C. C. K. D.*

Here follows a transcript of the record and proceedings had in the case of

JOHN DEN on the demise A. WALDEN
against
CRAIG AND ALLEN.

Which is in the words and figures following, to wit:

Pleas before the honorable Harry Innis, judge of the district of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the district of Kentucky, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c. For that whereas Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, in Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let, to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, and one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease, unto the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and thereupon he brings suit, &c.

WILLIAM CLARKE, *for Plaintiff.*

Pledges to prosecute.

JOHN DOE & RICHARD ROE.

I am informed that you are in possession of, or claim title to the pre-

mises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the said premises, do advise you to appear on the first day of the next March term, in the court of the United States, for the district aforesaid, by some attorney of that court, and then and there by a rule of the said court cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

RICHARD FEN.

Twenty-eighth January, one thousand seven hundred and ninety-seven.

BOURBON COUNTY, *set:*

On the twenty-second day of February, one thousand seven hundred and ninety-seven, came Thomas McClahan, before me, the subscriber, one of the justices of the peace for said county, and made oath that he, on the seventeenth day of this instant month, February, he did deliver a copy of the foregoing declaration and notice on the premises, in the foregoing declaration mentioned, unto each of the following persons, to wit: Amzel Chapin, Abraham Shockey, and Jonathan Rose, each being tenant in possession of part of the premises in the said declaration mentioned; and that he also on said day did deliver another copy of said declaration and notice to the wife of Charles Rector, one other tenant in possession of other part of the premises in the said declaration mentioned; and also on the same day did deliver one other copy of the said declaration and notice to the wife of Wm. Allen, another tenant in possession of other part of the premises in the said declaration of ejectment mentioned; and this deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear by some attorney of the United States for said district the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made, to wit:

It appearing to the court by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear here on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto, or on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term, in the year one thousand

seven hundred and ninety-eight, the following order was made herein, to wit:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, William Allen, be made defendant to this suit, instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and argue to insist upon the title only at the trial.

And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution if the plaintiff himself doth not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment in manner and form as the plaintiff against them hath complained, and of this they put themselves upon the country, and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the lands in controversy between parties on the day of next, if fair, if not, then on the next fair day, and then lay off the same as either party shall direct, having regard to all deeds and other evidence, and report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor, to remove force if any should be offered; and further proceedings are continued until the next court.

And afterwards, to wit, at the June term of the said court, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court by consent of the parties herein, by their attorneys, to wit:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st day of November, one thousand seven hundred and eighty-six.

The said Walden and Simon Kenton executed the agreement A, respecting the locating of said lands; the said agreement is made part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsements thereon, and a division thereof made as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid

by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment, to be entered for the defendants.

WM. CLARKE, *Atto. for plaintiff.*
THOS. TODD, *Atto. for defendants.*

And the court having fully considered and understood the said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat E, F, C, G, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and William Allen, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended, and the said defendant in *money*, &c ; and on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid returnable to the next court.

The following are the exhibits made part of the agreed case:

MASON COUNTY, *sct:*

We. the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose and Lewis Craig, assignee of Craig & Johnson, assignees of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north twenty-two east with the old line, one hundred and fifty-five poles, to two white ashes and sugar tree; thence north sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks in Johnson's line; thence south fifty-one degrees west, with Johnson's line, one hundred and sixty-eight poles, to three white oaks in John Walden's line; thence to the beginning, containing three hundred and twenty acres. To have and to hold the said quantity of three hundred and twenty acres to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden.

Also divided the said tract of land as follows: Beginning at two white oaks and sugar tree in John Walden's line, and corner to Lewis Craig; thence north twenty-two east, three hundred and seventy-five poles, to

a red oak and honey locust; thence north sixty-eight west, two hundred and sixty poles, to a white oak and box elder in Jacob Johnson's line; thence with said line south thirty-nine east, one hundred and twelve poles, to two buckeyes and white oak, east corner to said Johnson; thence south fifty-one west, three hundred and forty poles, to a walnut and two red oaks, corner to Lewis Craig; thence south sixty-one east, three hundred and twenty-nine poles, to the beginning. To have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c., in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this tenth day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered, before—

MASON COUNTY, *sct:*

April court, 1797.

This division of lands, between Walden and Craig, was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, Jr.,
Clerk M. C.

B.

Articles of agreement made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, witnesseth:

That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden in the district of Kentucky; in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Kenton, respect being held to the quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON ✕ KENTON, [L. S.]
mark.
AMBROSE WALDEN. [L. S.]

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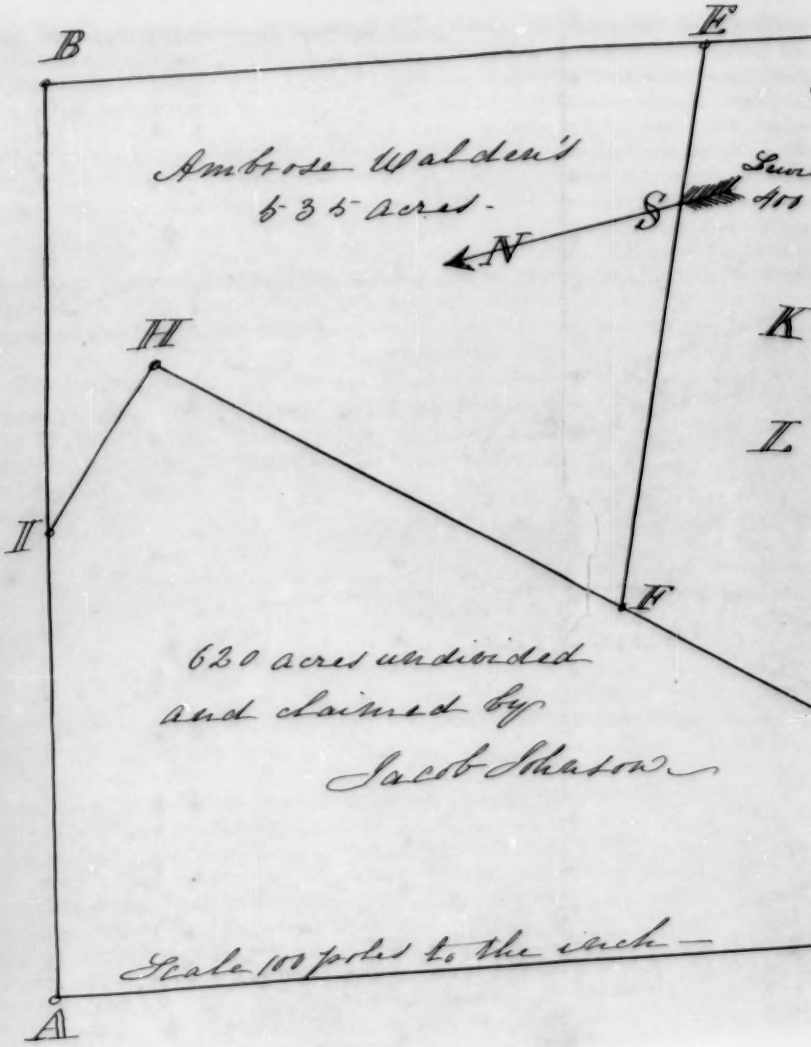
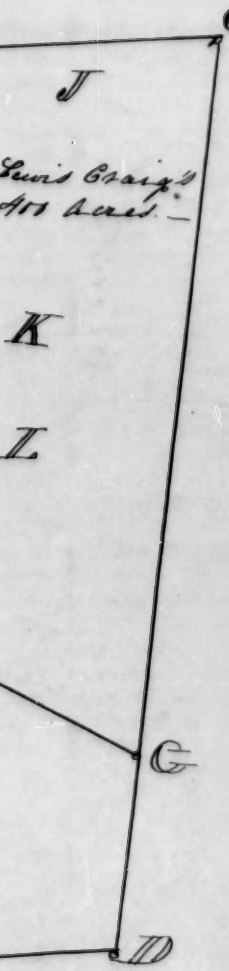

B
E
Ambrose Walden's
635 acres.
S
N
H
K
L
I
F
630 acres undivided
and claimed by
Jacob Shatsow
Scale 100 poles to the inch —
A


C
J
Lewis Craig's
400 Acres.
K
L
G
D

under the

[L. S.]

[L. S.]

Signed, sealed, and delivered, in presence of—
ANGUS CAMERON,
JOSEPH KAHITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.
SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.
Witness my hand, May 18th, 1791.
ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of 3,000 acre entry in the name of Walden, and one third of 3,000 acre entry in the name of John Taylor, and one third of one thousand five hundred acres in the name of William Nelson; John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON,
Trustee to Jno. Craig.
ELIJAH CRAIG,
Trustee to Jno. Craig.

[For plat, see original.]

The whole of the land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10th, 1794.

Surveyed for Ambrose Walden one thousand five hundred and fifty-five acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, to wit: Beginning at A, a buckeye and hoop ash stump, shown for Walden's most northwestwardly corner; thence south 68° east, 520 poles to B, two red oaks and honey locust; thence south 22° west, 530 poles to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence, with his line, north 61° west, 524 poles to D, a hickory, red oak, and white oak; thence north 22° east, 424 poles, to the beginning.

Also divided the above land as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence north 22° east, with Walden's line, 155 poles to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence north 61° west, 329 poles to F, a walnut and two red oaks in Jacob Johnson's line; thence, with the same, south 51° west, 168 poles to G, three white oaks in John Walden's line; thence, with the same, south 61° east, to the beginning at C, including 400 acres for Lewis Craig, as his equal third part in qual-

ity of that part of Ambrose Walden's survey [of] 1,333 acres, by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed.

Also divided the above land as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence north 22° east, 375 poles to B, a red oak and honey locust; thence north 68° west, 260 poles to I, a white oak and box elder in Johnson's line; thence, with the same, south 90° east, 112 poles to H, two buckeyes and white oak, corner to said Johnson; thence, with his line, south 51° west, 340 poles to F, a walnut and two red oaks, corner to said Craig; thence south 61° east, with his line, to the beginning at E, including 535 acres for said Ambrose Walden, as his equal two-thirds in quality of all that part of said Ambrose Walden's survey of 1,333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1,333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point; surveyed by me,

WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued, to wit:

[SEAL.] United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and William Allen his term yet to come and unexpired in four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in

and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John so ejected, drove out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record.

Therefore we command you, that without delay you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the third Monday in November next, and have then there this writ.

Witness Harry Innis, esquire, judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 4th day of August, 1800, and of our independence the 25th.

Teste: THOS. TUNSTALL, *C. K. D. C.*

This habere facias was returned by A. Walden the 5th of September, 1811.

And on the 14th day of September, 1811, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Wm. Allen his term yet to come of and in four dwelling-houses, twenty out-houses, 15 acres of meadow, one hundred acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason and district aforesaid. To have and to hold the said premises, with the appurtenances, to the said Den and his assigns, from the fifteenth day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farms, his said term not being yet ended, and kept out, and still doth keep out, and amove from his said possession, whereof the said Craig and Allen are convict, as appears to us of record; therefore we command you, without delay, you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in November next, and have then there this writ.

Witness Harry Innis, esquire, judge of our said district court, hath caused the seal thereof to be hereunto affixed this 14th day of September, 1811, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

This habere facias was returned by A. Walden on the 16th of May, 1812.

And on the 2d day of June, 1812, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, by the judgment of the said court, hath recovered against Lewis Craig and William Allen his term yet to come of and in four dwelling-houses, twenty outhouses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the fifteenth day of August, in the year of our Lord 1789, until the full end and term of ten years thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Allen afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Allen are convict, as appears to us of record; therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid; and how you shall have executed this writ make appear to the judge of our said district court, at the Capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness Harry Innis, esquire, judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

(Marshal's return.)—Stayed by supersedeas; 62 miles travelling.

JNO. A. MITCHELL, *Dep.*
For ROBERT CROCKETT.

2289.

Petition of Craig and Allen.

To the honorable the judges of the district court of the United States, for the seventh circuit, for the district of Kentucky, respectfully sheweth:

Your petitioners, Lewis Craig and William Allen, that at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States, for the Kentucky district, in an action of ejectment for four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, 300 acres of wood land, &c., &c., in favor of the lessee of Ambrose Walden, and which, since the last term of the court an habere facias possessionem has been issued against them.

Your petitioners are advised that the issuing the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued, after the lapse of a year after the entry of judgment, without a scire facias. Runnington on ejectment, 142.

2dly. The term had expired before the entry of the judgment, of course the judgment itself is unpeachable; but it is sufficient for the petitioners that no habere facias can legally issue when the term has expired. Runnington, 146, '7, 283, 122.

Your petitioners therefore pray that a supersedeas may issue, &c.

June 6th, 1812. J. HUGHES,
For Craig and Allen.

UNITED STATES OF AMERICA, *Kentucky district, sct:*

Issue a supersedeas, agreeably to the prayer of the foregoing petition, taking bond and security according to law.

Witness my hand this 6th day of June, 1812.

HARRY INNIS, *J. K. D.*

To John H. Hanna, clerk of the U. S. C. C., &c.

Injunction bond.

Know all men by these presents that we, Lewis Craig, William Allen, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig and Allen have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, A. D. 1812, wherein John

Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig & Allen are defendants, for the possession of 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

Now, if the said Craig and Allen shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Allen, and Bodley, shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Allen, in case the proceeding aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. Hughes, his attorney in fact.

Witness: SAMUEL J. M. MAJOR.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded, that from all further proceedings on a habere facias issued from the office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and William Allen are defendants, which habere facias issued on the 2d day of June, A. D. 1812, against the said Lewis Craig and William Allen, for the possession of four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason and district aforesaid, you altogether supersede, which habere facias, before the judges of our seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and William Allen, who having given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them. We command you to give notice to the said Ambrose Walden that he be before the judges of our said seventh circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to show cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JOHN H. HANNA, *C. C. C. K D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.
JNO. A. MITCHELL, *Deputy*.
For R CROCKETT.

And afterwards, to wit, at the May term of said 7th circuit court, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that the said plaintiff recover against the lessor of the defendant their costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term, on the 5th of August next ensuing, the following order was made, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid to show cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, on the 22d day of May, in the year 1819, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the district of Kentucky, has by judgment of the said court recovered against Lewis Craig and William Allen his term yet to come of and in 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. Therefore we command you that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ return to us on the first Monday in July next.

In testimony whereof John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence 43.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend

the declaration, by extending the demise to fifty years, which is done accordingly; but execution not to go out before the first day of March next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued, to wit:

JOHN DEN, on demise of Ambrose Walden,
against
LEWIS CRAIG and William Allen.

Execution dated 30th May, 1835.

His term yet to come of and in four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of Ambrose Walden,
against
WILLIAM ALLEN, Lewis Craig, the other defendant having departed this life.

Execution dated 18th November, 1836.

His term yet to come of and in four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this suit as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey in Tibbs' lane, at F; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E., from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 52° 35′ W., 95 poles, to a stake in another of said Walden's old lines in cleared land, at h; thence with the old line N. 70° west, 220 poles, to a stake i, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buckeyes and sugar tree, at 7; and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning, containing by said survey 1,144 acres 2 roods and 22 poles.

This execution was made returnable to February rules, 1837, delivered to *John* Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th of November, came the parties, by their attorneys, and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2nd. That the judgment, such as it is, was rendered more than twenty years ago, and it was irregular and illegal to issue any execution on it without a scire facias first sued out against the defendant, &c. L. Craig is dead, and no execution could regularly issue against the survivor without revival.

4th. That the execution illegally and irregularly issued on a judgment inoperative, and which, from lapse of time, gave no right to the clerk without being revived to issue the execution, or any other.

And the argument of counsel being heard, but the court not being advised took time, &c.

And afterwards, to wit, at a subsequent day of the term aforesaid, to wit, on the 21st of November, 1836:

The court being sufficient[ly] advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias which issued in this case on the 18th November inst. be, and the same is hereby, quashed; and that the defendant, in said execution, recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

On the trial of this motion the following bill of exceptions was tendered to the court, signed and ordered to be entered, which is as follows, to wit:

Be it remembered, that on the above motion being made in court the counsel of Walden objected to said motion being made, and to their being then received or heard by the court on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent or attorney.

2nd. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read and signing the orders; and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared on the first ground that the counsel of Walden had, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection, it appeared, that the clerk had on the dissolution of the injunction, on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Wal-

den that he would refuse to issue a writ of habere facias unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term, but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, inform[ed] the counsel of both parties that he would in consequence thereof issue the executions.

That before the adjournment of the court, the day before the motion was made, when the business was disposed of, it was mentioned from the bench, that the court would adjourn to meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered, that he hoped not; to which the counsel of the plaintiff in three motions answered that he did not know that he would have any business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel for the plaintiff in the motion, whose clients had not attended and were absent, that he had understood when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel and agent of Walden intended to take out, the execution; yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued; and that he then informed the counsel of Walden that he would on the next day make the motion in court.

On the above state of [the] case, the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And, on the second ground of objection, that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him either intentionally or otherwise; and thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rule obtained and motions made, in said action of ejectment, to have the said order allowing the said demise to be extended, quashed, and set aside; and the proceedings and orders of the court in said rule and motion were altogether, with the record of the habere facias, which this motion was made to have quashed, referred to and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig, before the issuing of the said writ of habere facias, which was admitted by the parties, the court on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of Walden excepted, and prays that this bill of exceptions may be signed, sealed, and enrolled, and the same is allowed.

THOMAS B. MONROE. [SEAL.]

A copy.—Attest: JOHN H. HANNA, *C. C. C. K. D.*

Here follow a transcript of the record and proceedings had in the case of—

JOHN DEN, on demise A. WALDEN,
against
CRAIG and RUTTER.

Pleas before the honorable Harry Innis, judge of the district court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c., for that, to wit, that whereas Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, at Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let, to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease unto the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements and premises aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet expired,

and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and thereupon he pledges, &c.

WILLIAM CLARKE, *for Plaintiff.*

JOHN DOE AND RICHARD ROE:

I am informed that you are in possession of or claim title to the premises in the declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the premises, do advise you to appear, on the first day of next March term, of the court of the United States, for the district aforesaid, by some attorney of that court, and then and there by rule of said court cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession. Your loving friend,

RICHARD FEN.

Twenty-eighth January, one thousand seven hundred and ninety-seven.

BOURBON COUNTY, *sct:*

On the twenty-second day of February, one thousand seven hundred and ninety-seven, came Thomas McGlanton, before me, the subscriber, one of the justices of the peace for said county, and made oath, on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of the premises in the said declaration mentioned; and that he also, on the said day, did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of another part of the premises in the said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned. And this deponent further saith, that he told them all severally that it was a declaration in ejectment, and that unless they did appear by some attorney of the United States, for said district, the next ensuing term, there would [be] judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILLIAM NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is therefore ordered by the court, that the said defendants appear here on the first day of the next term and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess

2 2/3.

the lease, entry, and ouster therein, and plead thereto; or, on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the March term of said court, in the year one thousand seven hundred and ninety-eight, the following order was made herein, to wit:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Charles Rutter, be made defendants to this suit instead of the casual ejector, Richard Fen, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial.

And it is further ordered, that if upon the trial of the issue a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution if the plaintiff himself doth not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment, in manner and form as the plaintiff against them hath complained, and of this they put themselves upon the country; and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Miles W. Conway do go on the land in controversy between the parties on the day of next, if fair, if not, then on the next fair day, and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, and report all matters of fact specially, and return four fair plats and certificates thereof to the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor to remove force, should any be offered; and further proceedings are continued until next court.

And afterwards, to wit, at the June term of said court, to wit, on the 19th day of June, A. D. 1800, the following special case was submitted to the court, by the consent of the parties herein, by their attorneys, to wit:

The tract of land marked on the plat by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the twenty-first day of November, one thousand seven hundred and eighty-six.

The said Walden and Simon Kenton executed the agreement, marked (A,) respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract, marked on the plat by the letters E, F, G, C, and claim the said part of the said tract

of land under the said agreement A, and the endorsements thereon, and a division thereof made as certified by the report B; which report and endorsements on said agreement *is* also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendant.

WILLIAM CLARKE,
Attorney for Plaintiff.
THOMAS TODD,
Attorney for Defendants.

And the court having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E, F, G, C, is in the plaintiff, and was on the day of filing the said declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Charles Rutter, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid, returnable to the next court.

The following are the exhibits made part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners, appointed by the worshipful the court of Mason [county] aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called on to divide a tract of land, containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, assignee of Craig and Johnson, assignees of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north twenty-two [degrees] east, with the old line, one hundred and fifty-five poles, to two white ashes and sugar tree; thence north sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks, in Johnson's line; thence south fifty-one degrees west, with Johnson's line, one hundred and sixty-eight poles, to three white oaks, in John Walden's line; thence to the beginning, containing three hundred and twenty acres.

To have and to hold the said quantity of three hundred and twenty acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer, subject to the claim of him, the said Walden. Also divided the said tract of land, as follows:

Beginning at two white oaks and sugar tree, in John Walden's line, and corner to Lewis Craig; thence north twenty-two [degrees] east, three hundred and seventy-five poles, to a red oak and honey locust; thence north sixty-eight [degrees] west, two hundred and sixty poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line south thirty-nine [degrees] east, one hundred and twelve poles, to two buckeyes and white oak, east corner to said Johnson's; thence south fifty-one [degrees] west, three hundred and forty poles, to a walnut and two red oaks, corner to Lewis Craig; thence south sixty-one [degrees] east, three hundred and twenty-nine poles, to the beginning.

To have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c., in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division *of* the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this 10th day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY, *sct:*

April court, one thousand seven hundred and ninety-seven.

This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, JR., *M. C.*

B.

Articles of agreement, made and done this 1st day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which, the said Ambrose Walden doth bind

himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Kenton, respect being held to the quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON + KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of—
ANGUS CAMERON,
JOSEPH CAHITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest of the within article to John Craig and Robert Johnson, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON.
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres, in the name of William Nelson; John Craig's interest is only given up.

December 28th, one thousand seven hundred and ninety-three.

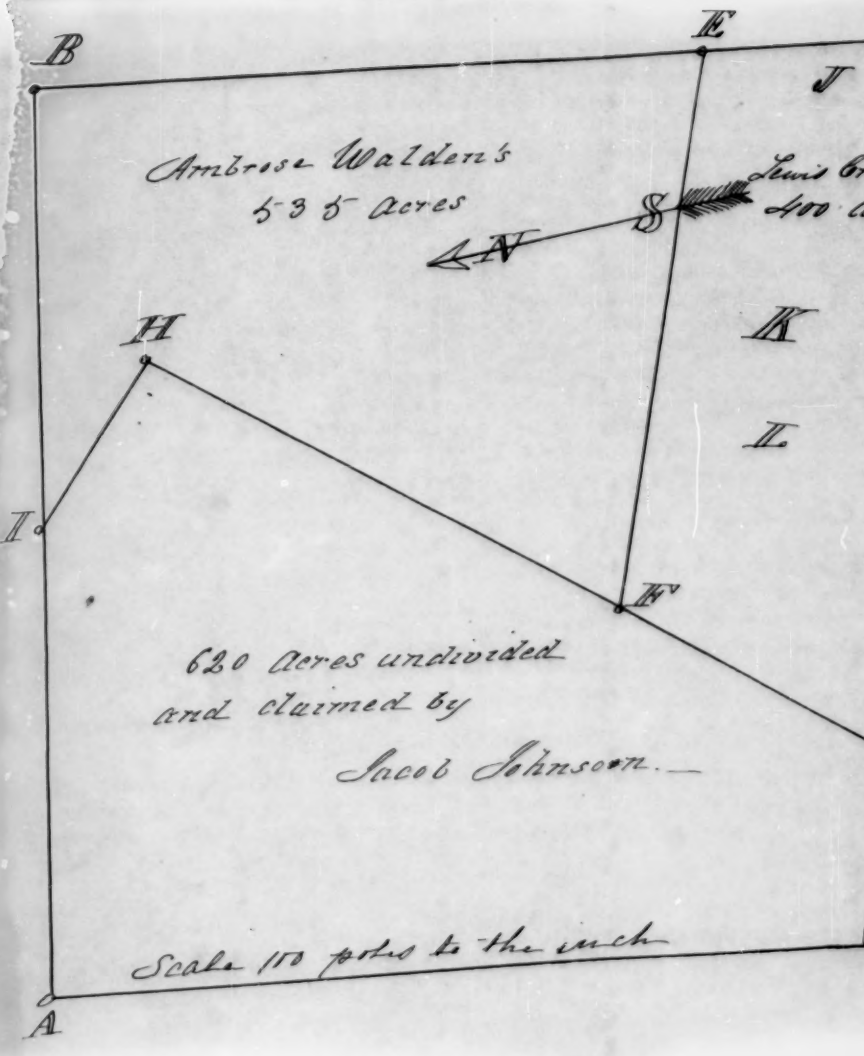
ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat, see original, page 549.]

The whole of the land is now claimed and contended for by Thos. Bodley and James Hughes.

February 10th, 1794.

Surveyed for Ambrose Walden one thousand five hundred and fifty-five acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at a buckeye and hoop ash stump, shown for Walden's most northwestwardly corner; thence S. 68° E., 520 poles, to B, two red oaks and honey lo-


292
B
E
J
Ambrose Walden's
535 acres
S
N
H
K
L
I
F
620 acres undivided
and claimed by
Jacob Johnson.
Scale 100 poles to the inch
A

C
J
Craig's
Acres
G
D

custs; thence S. 22° W., 530 poles, to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence with his line north 61° west, 524 poles, to D, a hickory, red oak, and white oak; thence N. 22° E., 424 poles, to the beginning. Also divided the above land as follows, to wit: beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence N. 22° E., with Walden's line, 155 poles, to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence N. 61° W., 329 poles, to F, a walnut and two red oaks in Jacob Johnson's line; thence with the same S. 61° E., to the beginning at C, including 400 acres for Lewis Craig, as his equal third part in quality of that part of Ambrose Walden's survey of 1,333 acres, by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed. Also divided the above land as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles, to B, a red oak and honey locust; thence N. 68° W., 260 poles, to I, a white oak and box elder in Johnson's line; thence with the same S. 90° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence with his line S. 51° W., 340 poles, to F, a walnut and two red oaks, corner to said Craig; thence S. 61° E., with his line to the beginning at E, including 535 acres for said Ambrose Walden, as his equal two thirds in quality of all that part of said Ambrose Walden's survey of 1,333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed as the commissioners of Mason allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1,333 acres that is claimed by a survey of Jacob Johnson, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also sold to Wm. Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point.

Surveyed by me— WHITFIELD CRAIG.

And on the 4th day of August, in the year 1800, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately, in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable, and three hundred acres of wood land, with the appurtenances, situate,

lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the fifteenth day of August, in the year of our Lord one thousand seven hundred and eighty-nine, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Rutter afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his term aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make it appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the third Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereto affixed this fourth day of August, 1800, and of our independence the twenty-fifth.

Teste: THOS. TUNSTALL, *C. K. D. C.*

This habere facias was delivered to A. Walden, and returned by him on the 5th day of September, 1811.

And on the 14th of September, 1811, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the same court, hath recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling-houses, twenty out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid. To have and to hold said premises, with the appurtenances, to the said John Den and assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Rutter afterwards, to wit, on the day and year aforesaid,

at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall execute this writ make it appear to the judge of our district court, at the Capitol, in the town of Frankfort, on the first Monday in November next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 14th day of September, 1811, and of our independence the thirty-sixth.

Attest: JNO. H. HANNA, *C. K. D. C.*

This execution was returned by A. Walden on the 16th May, 1812.

And on the 2d day of June, in the year 1812, the following habere facias was issued herein, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the Kentucky district, and by the judgment of the said court, hath recovered against Lewis Craig and Charles Rutter his term yet to come of and in 4 dwelling-houses, 20 out-houses, 15 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being in the county of Mason, in the district aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years *years* next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Rutter afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Rutter are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, his term yet to come of and in the lands and tenements aforesaid, with the appurtenances; and how you shall have executed this writ make appear to the judge of our district, at the Capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

(*Marshal's return.*)

Stayed by supersedeas; 62 miles travelling.

JNO. A. MITCHELL, *Deputy.*
For R. CROCKETT, *M. K. D.*

Petition of Craig and Rutter.

To the honorable the judges of the circuit court of the United States for the 7th circuit, for the district of Kentucky:

Respectfully showeth, your petitioners, Lewis Craig and Charles Rutter, that, at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for four dwelling-houses, &c., &c., on which, since the last term of the court, an habere facias possessionem has been issued against them.

Your petitioners are advised that the issuing the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after the lapse of a year after the entry of judgment, without a scire facias. Runnington on ejectment, 142.

2ndly. The term had expired before the entry of judgment; of course the judgment itself is impeachable. But it is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Runnington, 146, '7, 283, 122.

Your petitioners, therefore, pray that a supersedeas may issue, &c., &c.

J. HUGHES,
For Craig and Rector,
Called in the proceedings *Rutter.*

UNITED STATES OF AMERICA,
Kentucky district, sct:

Issue a supersedeas agreeably to the foregoing petition, taking bond and security according to law.

Witness my hand, as judge of said district, this 6th day of June, 1812.

HARRY INNIS.

To JNO. H. HANNA, *Clerk U. S. C. C., &c., &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Charles Rutter, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to which payment, well and truly to be

made to the said Walden, his heirs, executors, administrators, or assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig & Rutter have this day obtained a writ of supersedeas to stay all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States in and for the Kentucky district, on the 2d day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Rutter are defendants, for the possession of four dwelling-houses, twenty out-houses, fifteen acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

Now, if the said Craig and Rutter shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Rutter & Bodley shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Rutter, in case the proceedings aforesaid shall be affirmed, then the above obligation to be void, or else to remain in full force and virtue.

[SEAL.]
[SEAL.]
THOS. BODLEY, [SEAL.]
By J. HUGHES, *his atto. in fact.*

Witness: SAMUEL J. M. MAJOR.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting.

You are hereby commanded, that from all further proceedings on a habere facias, issued from the office of the district court of the United States in and for the Kentucky district, on a judgment in that court, wherein John Den, lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Charles Rutter are defendants; which habere facias issued on the 2d day of June, A. D. 1812, against the said Craig and Rutter, for the possession of four dwelling-houses, twenty out-houses, fifteen acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias, before the judges of our seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Charles Rutter, who have given bond and security to prosecute with effect, and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them.

We command you to give notice to the said Ambrose Walden, that he be before the judges of our said seventh circuit court at the Capitol,

in the town of Frankfort, on the first Monday in November next, to show cause why the said habere facias should not be quashed; and have then there this writ.

In testimony whereof, John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

(*Marshal's return.*)

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term of said court, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the demise in the declaration, and that the said plaintiffs recover against the lessor of the defendants their costs in this behalf expended.

And afterwards, to wit, at the May term of said court, in the year 1817, to wit, at a continuation of said term, on the 5th of August next ensuing, the following order was made, to wit:

This day came the plaintiff in the foregoing suit, and moved the court for a rule on the defendants aforesaid, to show cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And afterwards, to wit, on the 22d day of May, in the year 1819, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States for the district of Kentucky, has, by a judgment of [our] said court, recovered against Lewis Craig and Charles Rutter his term yet to come of and in four dwelling-houses, twenty out-houses, fifteen acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid; therefore we command you that, without delay, you cause the said John Den to have possession of the land aforesaid, with the appurtenances; and how you shall have executed this writ return to us on the first Monday in July next.

In testimony whereof John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 22d day of May, 1819, and of our independence the 43d.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This execution was not taken out of the office.

And afterwards, to wit, at the May term of said court, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly; but execution not to go out before the first day of March next.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued, to wit:

JOHN DEN, on demise of Ambrose Walden, against LEWIS CRAIG and CHARLES RUTTER. } Execution dated 30th May, 1835.

His term yet to come of and in four dwelling-houses, twenty outhouses, fifteen acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff, upon this execution, any land outside of the locator's part, nor any land within which is enjoined by the order of Dec. 2nd, 1834.

This execution was made returnable to 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, on the 8th day of November, 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of Ambrose Walden, against CHARLES RUTTER, Lewis Craig, the other defendant, having departed this life. } Execution dated 8th November, 1836.

His term yet to come [of] and in four dwelling-houses, 20 outhouses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will only deliver so much of the land to the plaintiff in this writ as lies within the following boundary: Beginning at a stake six feet north of a white oak tree, corner of Welden, as last surveyed, represented at 8 on the connected plat, and running thence with that line S. 37° 25 E., 297 poles, to a stake in a line of Welden's original survey in Tibbs' lane, at L; thence with that line S. 20 W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E. from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 52° 35 W., 95 poles, to a stake in another of said Walden's old lines, in cleared land, at N; thence with the old line N. 70° W., 220 poles, to a stake, i, in another of the decreed lines;

thence with that line N. 37° 25 W., 273 poles, to two buckeyes and sugar tree, at 7; thence N. 53 35 E., 461 poles and 20 links, to the beginning, containing, by said survey, 1,144 acres 2 roods and 22 poles.

This execution was made returnable to February rules, 1837; delivered to John Walden, and never returned.

And afterwards, to wit, at the November term, 1836, of said court, to wit, the 19th day of November, came the parties, by their attorneys; and the defendant, by his attorney, moves the court to quash the execution issued in the cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2. That the judgment, such as it is, was rendered more than twenty years ago, and it was irregular and illegal to issue any execution on it without a scire facias first sued out against the defendant, &c.

3. Lewis Craig is dead, and no execution could regularly issue against the survivor without revival.

4. That *the* illegally and irregularly issued on a judgment inoperative, and which, from lapse of time, gave *us* right to the clerk, without being revived, to issue the execution, or any other.

And the argument of counsel being heard, but the court, not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term, afterwards, to wit, on the 21st of November, 1836, the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias which issued in this case on the 18th November instant, be, and the same is hereby, quashed, and that the defendant in said execution recover of the lessor of the plaintiff, Ambrose Walden, *their* costs herein expended.

On the trial of the motion the following bill of exceptions was tendered to the court, signed, and ordered to be entered, which is as follows, to wit:

Be it remembered, that, on the above motion being made in court by the counsel of the plaintiff therein, the counsel of Walden objected to said motion being made, and to *their* being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Welden, his agent or attorney.

2nd. Because the court having, on the day before the making of the motion, disposed of all the business before it, mentioned, on the adjournment, that the court would meet next day for the purpose of hearing and signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections it appeared, on the first ground, that the counsel of Walden had, before the issuing of said execution, suggested the death of said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party. And, on the other ground of objection, it appeared that the clerk had,

on the dissolution of the injunction, on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term, but that he had afterwards, upon receiving a bond of indemnity from the agent of Welden, and three days before the making of these motions, informed the counsel of both parties that he would, in consequence thereof, issue the execution.

That before the adjournment of the court, on the day before the motion was made, when the business was disposed of, it was mentioned from the bench that court would adjourn to meet next day, to hear and sign the orders. Upon which the counsel of Walden inquired, whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered, that he did not know that he would have any business, but that if he should have any motion to make he would certainly make it; upon which the court adjourned to the usual hour and day.

It appeared, from the statement of the counsel for the plaintiff in the motion, whose clients had not attended, and were absent, that he had understood, when it was said that the bond of indemnity was given, that the clerk intended to issue, and that the counsel or agent of Walden intended to take out, the execution. Yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued, and that he then informed the counsel of Walden that he would, on the next day, make the motion in court.

On the above state of [the] case, the court was of opinion, on the first ground, that no other notice of the motion was necessary; and, on the second ground of objection, that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when it was not full, was not caused by him, either intentionally or otherwise; and thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings, in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rule obtained and motions made in said action of ejectment to have the said order allowing the said demise to be extended, quashed, and set aside, and the proceedings and orders of the court in said rule and motion, were, altogether, with the record of the habere facias, which this motion was made to have quashed, referred to, and given in evidence, and made part hereof, so that the whole may appear in any transcript

of the record of this motion which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in record, and the fact of the death of the said Craig before the issuing of the said writ of habere facias, which was admitted by the parties, the court, on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of Walden excepted, and prays that this his bill of exceptions may [be] signed, sealed, and enrolled; and the same is allowed.

THOS. B. MONROE. [SEAL.]

A copy.—Att:

JOHN H. HANNA, *C. C. C. K. D.*

Here follows a transcript of the record of the proceedings had in the case of Den, on demise of Walden, against Craig's heirs & Shockey.

Pleas before the hon. Harvey Jones, judge of the district court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c., for that, to wit, that whereas Ambrose Walden, on the 15th day of August, in the year of our Lord one thousand seven hundred and eighty-nine, in Mason county, in Kentucky district aforesaid, had demised and granted, and to farm let, to the said John Den, four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on Johnson's fork of Licking, in Mason county aforesaid. To have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the date of the said case until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Richard Fen afterwards, to wit, on the day and year aforesaid, in the county and district aforesaid, with force and arms, &c., entered upon the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possession, and then and there did other injuries unto him, against

the peace and to the damage of said John Den sixty dollars; and therefore he brings suit, &c.

WILLIAM CLARK,
Attorney for plaintiff.

Pledges to prosecute: John Doe and Richard Roe.

I am informed that you are in possession of, or claim title to the premises in the declaration of ejectment, or to some part thereof, and I being sued as casual ejector in this action, and having no claim or title to the premises, do advise you to appear on the first day of the next March term of the court of the United States for the district aforesaid, by some attorney of that court, and then and there by rule of that court cause yourself to be made defendant in my stead, otherwise I shall let judgment go against me by default, and you will be turned out of possession.
28th January, 1797. RICHARD FEN.

BOURBON COUNTY, *sct:*

On the 22d day of February, 1797, Thomas McGlanton came before the subscriber, one of the justices of the peace for said county, and made oath that he did on the 17th day of the present month, February, deliver a copy of the foregoing declaration and notice on the premises, in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of part of the premises in said delaration mentioned; and that he also on said day did deliver another copy and notice to the wife of Chas. Rutter, one other tenant in possession of part of the premises in said declaration mentioned; and also, on the same day, did deliver another copy of the said declaration and notice unto the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned; and the deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendants by default, and they would be turned out of possession, or words to that effect.

WM. NEAL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz:

It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's action, it is therefore ordered by the court that the said defendants appear on the first day of the next term, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto, or on failure thereof, (they having notice of this order) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem awarded the plaintiff.

And afterwards, to wit, at the next term in the year 1798, the foregoing order was made herein, to wit:

On motion, it is ordered by the court, and by the agent of parties, that Lewis Craig, together with the other defendant, Abraham Shockey, be made defendants to this suit, instead of the casual ejector, Richard Fenn, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and [plead] thereto no[t] guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if upon the trial of the issue a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself should not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say that they are in no wise guilty of the trespass in ejectment in manner and form as the plaintiff has against him complained, and of this they *they* put themselves upon the country, and the plaintiff does so likewise; therefore let a jury come, &c.

And it is further ordered, that Milus W. Conway do go on the land in controversy on the day of next, if fair, if not, then on the next fair day, and then and there lay off the same as either party shall direct, having regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court before the day of hearing; and the sheriff of Mason county is directed to attend said surveyor, to remove force should any be offered; and further proceedings are continued until next court.

And afterwards, at the June term of the court, aforesaid to wit, on the 18th day of June, in the year 1800, the following special case was submitted to the court by the consent of the parties herein, by their attorneys:

The tract of land marked on the plat A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 21st of November, 1786.

The said Walden and Simon Kenton executed the agreement marked A, respecting the locating of said lands; the said agreement is made part of this case.

The defendants are in possession of that part of the tract marked with the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and thereon the endorsement, and a division thereof made as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARKE, *Atto. for plaintiff.*
THOS. TODD, *Atto. for defendants.*

And the court having fully considered and understood the said case, is of opinion that the legal title to the said part of said tract of land, marked on the plat E, F, C, G, is in the plaintiff, and was on the day of filing the declaration in this suit.

It is therefore considered by the court, that the plaintiff recover against the defendants, Lewis Craig and Abraham Shockey, his term of and in the premises aforesaid, with the appurtenances, yet to come and unexpired, together with his cost by him in this behalf [expended;] and the said defendants in mercy, &c.; and on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid returnable to the next court.

The following are the exhibits made a part of the agreed case:

MASON COUNTY, *sct:*

We, the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called upon to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig *aforesaid*, of Craig & Johnson, assignee of Simon Kenton, the locator of said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Craig as aforesaid, proceeded on this day to divide the same in the said proportions, that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit:

Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north 22 E., with the old line, 155 poles, to two white ashes and sugar tree; thence N. 61 W., 329 poles, to a walnut and three red oaks, in Johnson's line; thence S. 51 W., with Johnson's line, 168 poles, to three white oaks in John Walden's line; thence to the beginning, containing 320 acres. To have and to hold the said quantity of 320 acres to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c., forever, and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer subject to the claim of him, the said Walden.

Also divided the said tract of land, as follows: Beginning at two white oaks and sugar tree, in John Walden, and corner to Lewis Craig; thence N. 22 E., 575 poles, to a red oak and honey locust; thence N. 68 W., 260 poles, to a white oak and box elder in Jacob Johnson's line; thence with said line S. 39 E., 112 poles, to two buckeyes and white [oak], east corner to said Johnston; thence S. 51 W., 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence S. 61 E., 329 poles, to the beginning. To have and to hold the said tract of land, containing 640 acres to him, the said Ambrose Walden,

and his heirs, &c., forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore is not divided, but is, on that account, left in tenancy in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands and affixed our seals, this 10th day of February, 1794.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before—

MASON COUNTY:

April court, one thousand *seven hundred and twenty-seven*. This division of lands between Walden and Craig was returned by the commissioners, and ordered to be recorded.

Teste: THOMAS MARSHALL, JR., *M. C.*

B.

Articles of agreement, made and done this first day of May, 1780, between Simon Kenton, of Kentucky, of the one part, and *and* Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in Kentucky, in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises under the penalty of fifty thousand pounds.

his
SIMON X KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL]

Signed, sealed, and delivered, in the presence of—
AGNUS CARRAON,
JOSEPH KAHITE, and
STEPHEN HUSTON.

I do assign over my right, title, and interest of the within article to John Craig and Robert Johnston, this 24th day of April, 1787.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May the 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the three thousand acre entry in the name of Walden, and one-third of three thousand acre entry in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson, John Craig's interest is only given up. December 28th, 1793.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

☞ (The plat and survey comes in here.)

And on the 4th day of August, 1800, the following habere facias was issued on the foregoing judgment:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our own district court of the United States, for the district of Kentucky, and by the judgment of the same court, hath recovered against Lewis Craig and Abraham Shockey his term yet to come in and of four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason and district aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, in the year of our Lord 1789, until the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Craig and Shockey, afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out, and still keeps out the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Shockey are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid yet to come of and in the lands and tenements aforesaid; and how you shall execute this writ make appear to the judge of our district court, at the Capitol,

in the town of Frankfort, on the third Monday in November next, and have then there this writ.

Witness Harvey Innes, esquire, judge of our said district court, hath caused the seal thereof to be hereto affixed, this 4th day of August, 1800, and of our independence the 25th.

Teste: THOS. TUNSTALL, *C. K. D. C.*

This execution was returned by A. Walden the 5th of September, 1811.

And on the 14th day of September, 1811, the above habere facias was renewed, delivered to A. Walden, and returned by him 16th May, 1812.

[For plat, see original, page 576.]

☞ This comes before the habere facias.

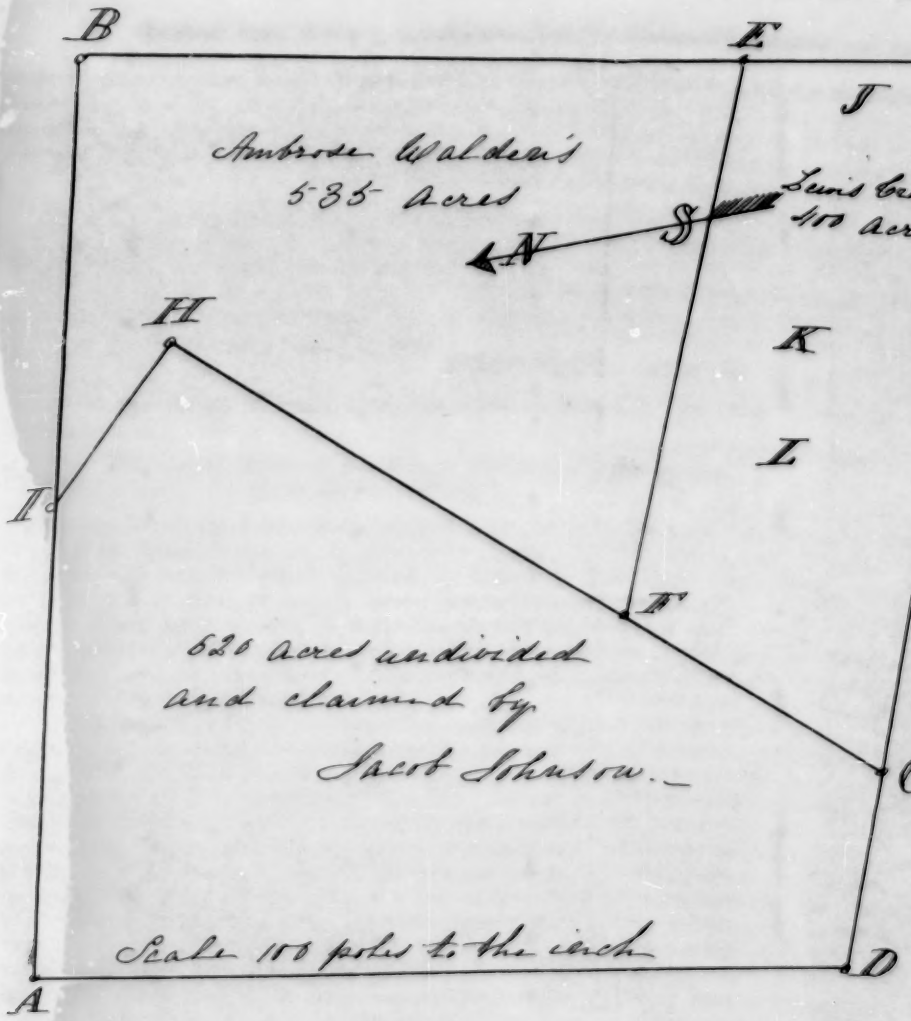
The whole of the land is now claimed and contended for by Thomas Bodley and James Hughes.

February 10th, 1794.

Surveyed for Ambrose Walden one thousand five hundred and fifty-five acres of land in Mason county, and on the waters of Johnson's fork of Licking, and bounded as follows, viz: Beginning at A, a buckeye and hoop ash stump, shown for Walden's most northwesterly corner; thence south 68° east, 520 poles to B, two red oaks and honey locust; thence south 22° west, 530 poles to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence, with his line, north 61° west, 524 poles to D, a hickory, red oak, and white oak; thence north 22° east, 424 poles, to the beginning.

Also divided the above land as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye; thence north 22° east, with Walden's line, 155 poles to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence north 61° west, 329 poles to F, a walnut and two red oaks in Jacob Johnson's line; thence, with the same, south 61° east, to the beginning at C, including 400 acres for Lewis Craig, as his equal third part in quality of that part of Ambrose Walden's survey [of] 1,333 acres, by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county allotted and directed.

Also divided the above land as follows, to wit: Beginning at E, two white ashes and sugar tree, corner to Lewis Craig's 400 acres; thence north 22° east, 375 poles to B, a red oak and honey locust; thence north 68° west, 260 poles to I, a white oak and box elder in Johnson's line; thence, with the same, south 90° east, 112 poles to H, two buckeyes and white oak, corner to said Johnson; thence, with his line, south 51° west, 340 poles to F, a walnut and two red oaks, corner to said Craig; thence south 61° east, with his line, to the beginning at E, including 535 acres for the said Ambrose Walden, as his equal two-thirds in quality [of] all that part of said Ambrose Walden's survey of 1,333 acres, by patent, that is not included in Jacob Johnson's survey, surveyed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line; thence, with the same, south 90° east, 112 poles to H, two buck-
eyes and white oak, corner to said Johnson; thence, with his line,
south 51° west, 340 poles to F, a walnut and two red oaks, corner to
said Craig; thence south 61° east, with his line, to the beginning at E,
including 535 acres for the said Ambrose Walden, as his equal two-thirds
in quality [of] all that part of said Ambrose Walden's survey of 1,333
acres, by patent, that is not included in Jacob Johnson's survey, surveyed

as the commissioners of Mason allotted and directed; and the remaining 620 acres, known in the plat by the letters A, I, H, G, D, is that part of said Welden's survey of 1,333 acres that is claimed by a survey of Jacob Johnston, and left undivided by said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Bore, and marked in the plat thus, J; and also sold to William Allen, and marked in the plat thus, K; and also sold to Mr. Rector, and marked in the plat thus, L. The said Bore, Allen, and Rector are living on the 400 acres in the plat marked Lewis Craig, and nearly as the letters point; signed by me,

WHITFIELD CRAIG.

And on the 2d day of June, 1812, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Welden, lately in our district court of the United States for the Kentucky district, by judgment of the said court hath recovered of Lewis Craig and Abraham Shockey his term yet to come of and in four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the fifteenth day of August, A. D. 1789, until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said premises, with the appurtenances, and was thereof possessed until the said Craig and Shockey afterwards, to wit, on the same day and year, at the county and district aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, from his farm aforesaid, his said term being not yet ended, and kept, and still doth keep out, the said John, so ejected, drove out, and amoved from his said possession, whereof the said Craig and Shockey are convict, as appears to us of record.

Therefore we command you that, without delay, you cause the said John Den to have his possession of his farm aforesaid, with the appurtenances; and how you shall execute this [writ] make appear to the district court, at the Capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness Harvey Innes, esquire, judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return, to wit:

Stayed by supersedeas; 62 miles travelling.

And afterwards, to wit, on the 8th day of July, 1812, came Craig and Shockey, and filed the following petition and order for supersedeas, to wit:

Petition of Craig and Shackey.

To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth: Your petitioners, Lewis Craig and Abraham Shockey, that at the June term, 1800, a judgment of ejectment was entered against them in the court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for four dwelling-houses, &c., &c.; on which, since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors, viz:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811; the execution ought to have issued after a lapse of a year after the entry of judgment without a scire facias. (Runn. on eject., 142.)

2ndly. The term had expired before the entry of judgment, of course the judgment itself is impeachable; but is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Runn., 146–'7, 283, 122.

J. HUGHES,
For Craig & Shockey.

Order for supersedeas.

Issue a supersedeas agreeably to the forgoing petition, taking bond and security according to law. Witness my hand, as judge of the said district, this 6th day of June, 1813.

HARVEY INNES.

To JOHN H. HANNA, *Clerk U. S. C. C. &c.*

Injunction bond.

Know all men by these presents, that we, Lewis Craig, Abraham Shockey, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Abraham Walden, of the State of Virginia, in the sum of one thousand dollars; to which payment well and truly to be made, to the said Walden, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig and Shockey, have this day obtained a writ of supersedeas to state all further proceedings upon a writ of habere facias, which

issued from the office of the district court of the United States, in and for the Kentucky district, on the 2nd day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the said Craig and Shockey are defendants, for the possession of four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

Now, if the said Craig and Shockey shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Shockey, and Bodley, shall well and truly pay, or cause to be paid, all such damages and costs as may be awarded against the said Craig and Shockey, in case the proceedings aforesaid shall be affirmed, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.]

THOS. BODLEY. [SEAL.]

By J. HUGHES, *his att'y in fact.*

Witness: SAMUEL J. M. MAJOR.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded, that, from all further proceedings on a habere facias, issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein the said John Den, lessee of Ambrose , is plaintiff, and Lewis Craig and Abraham Shockey are defendants, which habere facias issued the 2d day of June, A. D. 1812, against the said Craig and Shockey, for the possession of four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid, you altogether supersede; which habere facias, before the judges of our 7th circuit court of the United States, in and for the Kentucky district, is brought to be *conected* on the petition of the said Lewis Craig and Abraham Shockey, who have given bond and security to prosecute with effect; and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damage and costs as shall be awarded against them.

We command you to give notice to the said Ambrose Walden, that he be before the judges of our said seventh circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof John Marshall, esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *Deputy.*
For ROBERT CROCKETT, [*M. K. D.*]

Order quashing execution.

And afterwards, to wit, at the May term, 1813, of the 7th circuit court of the United States, in and for the Kentucky district, the following order was made herein, to wit:

The court being now sufficiently advised for and concerning the premises, do order, that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration, and that the said plaintiffs recover against the lessee of the defendant their costs in this behalf expended.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, to wit, at a continuation of said term on the 5th day of August next ensuing, the following order was made herein, to wit:

This day came the plaintiffs in the foregoing suit, and moved the court for a rule on the defendants aforesaid to show cause, on the 6th day of the next term of this court, why the *why the* demise in the declaration should not be extended.

And afterwards, on the 22d of May, 1819, the following habere facias was issued, to wit:

WALDEN'S LESSEE
against
CRAIG & RUTTER.

Execution dated 22d May, 1819.

4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and three hundred acres of wood land, in the county of Mason.

This execution was made returnable to July rules, 1819, and not taken out of the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made in this suit, to wit:

Order extending demise.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration by extending the demise to fifty years, which is done accordingly; but execution not to go out before the first day of March next.

Petition of Blair.

And afterwards, to wit, on the 8th day of May, in the year 1835, came Thomas Blair into the court aforesaid, and filed the following petition:

To the hon. the judges of the United States circuit, for the seventh circuit and Kentucky district, your petitioner, Thomas Blair, humbly represents: That in the year 1797 a certain Ambrose Walden, on the demise of John Den, instituted an action of ejectment in the district court of this district, against Richard Fen, as casual ejector, and during the following year Lewis Craig and Abraham Shockey were admitted to defend said suit, and at the June term, 1800, a judgment was rendered in favor of said Weldon for the land then in possession of said Shockey, the tenant in possession, but no writ of possession has ever been executed to this day; that the demise in said declaration was laid at ten years, from the 15th day of August, 1789, and of course expired on the 15th day of August, 1799, and remained dead and inoperative for upwards of twenty-four and nearly twenty-five years, by which lapse of time, as your petitioner is advised, the possession *refered* into a complete legal estate; but at the May term, 1824, of your honorable court, on the motion of said Walden, the demise aforesaid was amended by inserting a new one of fifty years instead of ten, which has been inserted in the original declaration without the knowledge of, or notice to, either Craig or Shockey, as your petitioner is informed and believes, or any other person interested in said land, and said ex parte order was not discovered until after the term at which it was made was over.

Your petitioner is advised that said order was surreptitiously obtained and improvidently made for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment perfectly dead for upwards of twenty years, and that for the following facts and reasons, to wit:

1st. After the expiration of the demise in said Walden's declaration, and before the renewal thereof, your petitioner is advised that said Shockey sold the land in contest to Robert Pogue, who claimed it previously under the patent in the name of Tebbs and Co. for ten thousand acres of land, posterior in date to that of said Walden, and adverse thereto; and the said Pogue, who purchased in order to unite the conflicting claims in himself, then took possession of said land in contest, and continued possession in himself until about the year 1814, when he sold the same to Tilton and Huston, who held the possession for two or three years, and then sold to Gilson Hambrick, who continued in possession until the demise was extended, and until he sold and delivered possession unto your petitioner, which was in the year 1831 or 1832. At the date of the extension of the demise aforesaid, viz., the 8th June, 1824, the said Hambrick claimed and owned the land in contest, and was, in fact, the terre-tenant; and the said Hambrick had no notice or knowledge of the extension whatever, but the whole proceedings, as to him, was ex parte. Nor did your petitioner have any knowledge whatever that said demise had been extended at or before the date of his purchase aforesaid. The said Lewis Craig was not a terre-tenant, but entered a defendant with Shockey on account of having sold to him the land in contest. Your petitioner is advised that under this state of facts his redress is by motion to reverse and annul said order renewing the demise. And he accordingly prays for such

relief, as well as for such other redress, as his case requires; and, is in duty bound, &c.

THOMAS BLAIR.

The said Blair assigns the following errors, which he saith hath intervened in the record to his prejudice in this, viz:

1st. The land in question had been possessed adversely for upwards of twenty years after the first demise had expired, and previous to the order enlarging it, and no extension or renewal of the same ought to have taken place.

2nd. No renewal of the demise ought to have taken place without notice to Lewis Craig and Abraham Shockey, the one the landlord, and the other the terre-tenant, when the suit was commenced.

3rd. It was irregular to renew the demise after it had expired without notice to Hambrick, the terre-tenant, at the date of the extension of the demise.

4th. The whole proceedings was irregular, collusive, and void, and ought not to have been granted.

MOREHEAD & BROWN.

And upon filing said petition the said Blair, by his counsel, moved the court for a rule on the defendant Walden to shew cause why the order extending the demise in the declaration described and set forth in the petition should not be set aside. Whereupon the defendant to the petition, by attorney, entered his appearance to said rule, and the arguments of counsel being heard in part only, the same is laid over.

And afterwards, to wit, on the next day, viz., on the 9th of May, the court being now sufficiently advised of and concerning the plaintiffs' motion, do consider that the defendant show cause, on or before the sixth day of the next term, why the order made at the May term of this court, in the year 1824, extending the demise in the declaration of John Den, on the demise of Ambrose Walden, vs. Lewis Craig and Abraham Shockey, should not be set aside and annulled.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued herein, to wit:

JOHN DEN, on demise of AMBROSE WALDEN, pl'ff,
against
LEWIS CRAIG & ABRAHAM SHOCKEY, def'ts.

Execution dated May 30th, 1835.

His term yet to come of and in four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will not deliver to the plaintiff upon this execution any land outside of the locator's part, nor any land within, which is enjoined by the order of December 2d, 1834.

This execution was made returnable to first Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836, the following order was made:

THOMAS BLAIR, plaintiff,
vs.
AMBROSE WALDEN, defendant.

The evidence having been heard, and this motion having been argued on a previous day of the court, and the court being now sufficiently advised of and concerning the premises, it is considered by the court that said motion be overruled, and that the defendant recover of the plaintiff his costs expended in this motion.

And afterwards, to wit, on the 18th day of November, in the year 1836, the following habere facias was issued, to wit:

JOHN DEN, on the demise of AMBROSE WALDEN,
against
ABRAHAM SHOCKEY, Lewis Craig, the other defendant, having departed this life.

Execution dated 18th November, 1836.

His term yet to come [of] and in four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this writ as lies within the following boundary:

Beginning at a stake six feet north of a white oak tree, corner of Walden's, as last surveyed, represented at S on the connected plat, and running thence with that line S. 37° 25 E., 297 poles, to a stake in a line of Walden's original survey in Tibb's lane, at E; thence with that line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles N. 20° E. from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 52° 35 W., 95 poles, to a stake in another of said Walden's original lines in cleared land, at h; thence with the old line N. 70° W., 220 poles, to a stake i, in another of the decreed lines; thence with that line N. 37° 25 W., 273 poles, to 2 buckeyes and sugar tree, at 7, and thence N. 55° 35 E., 461 poles and 21 links, to the beginning, containing by said survey 1144 acres 2 roods and 22 poles.

This execution was made returnable to February rules, 1837, delivered to John Walden, and never returned.

And afterwards, to wit, on the 19th day of November, being at the November term, 1836, came the parties, by their attorneys, and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following ground:

1st. There is no legal or valid judgment upon which the execution could regularly issue.

2d. That the judgment, such as it is, was rendered more than 20

years ago, and it was irregular and illegal to issue any execution upon it, without a scire facias first sued out against the defendants, &c. L. Craig is dead, and no execution could regularly issue against the survivor without revival.

3rd. There is no judgment upon which, without a revival by scire facias, any execution could regularly and legally issue.

4th. That the execution irregularly and illegally issued on a judgment inoperative, and which, from lapse of time, gave no right to the clerk, without being revived, to issue the execution on any other.

And the arguments of counsel being heard, but the court not being advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term, to wit, on the 21st day of Nov., the court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider, that the habere facias which issued in this case on the 18th November instant, be, and the same is hereby, quashed; and that the defendants in said execution recover of the lessor of the plaintiff, Ambrose Walden, their cost herein expended.

On the trial of this motion, the following bill of exceptions was tendered to the court, signed and sealed, to be entered, which is as follows, to wit:

Be it remembered, that on the above motion being made in the court by the counsel of the plaintiff therein, the counsel of the defendants objected to said motions being made, and to their being then received or heard by the court, on the following ground:

1st. Because there had been [no] notice given to the said Walden, his agent, or attorney.

2d. Because the court having, on the day before the making of that motion, disposed of all business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read, or signing the orders, and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections, it appeared, on the first ground, that the counsel of Walden had, before the issuing of said execution, suggested the death of said Craig, and caused the same to be recited in the execution, and his death was in no wise controverted by either party.

And on the other ground of objection it appeared that the clerk had, on the dissolution of the injunction on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a habere facias, unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bon[d] of indemnity from the agent of Walden, and three days before the making of these motions, informed the counsel of both parties, that he would in consequence thereof issue the executions.

That before the adjournment of the court, the day before the motion

was made, when the business was disposed of, it was mentioned from the bench, that the court would adjourn to meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would alone constitute the court next day, answered that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any other business, but that if he should have any motion to make, he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statement of the counsel of the plaintiff in the motion, whose clients had not attended and were absent, that he had understood *that* when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out execution, yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making the motion, that the execution had issued; and that he then informed the counsel of Walden that he would on the next day make the motion in court.

On the above state of [the] case, the court was of opinion, on the first ground, that no other notice of the motion was necessary.

And on the second ground of objection, the court was of opinion, that it did not appear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court when not full was [not] caused by him either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., against Walden, and the order [in] this case extending the demise in the declaration, and the record of the case, of the rules obtained, and motions made in said action of ejectment to have the said order allowing the said demise to be extended quashed and set aside, and the proceedings and orders of the court in said rule and motion were altogether, with the record of the habere facias, which this motion was made to have quashed, referred to and given in evidence, and made part hereof, so that the whole may appear in any transcript of the record of this motion, which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the record, and the fact of the death of the said Lewis Craig, before the issuing of the said writ of habere facias, which was admitted by the parties, the court on the grounds filed, and constituting a part of the record of this case, sustained the said motion, and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of

Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled, and the same is allowed.

THOMAS B. MONROE. [SEAL.]

And afterwards, to wit, on the 9th day of November, 1840, came *Doe* on demise of Walden vs. Craig & Shockey, by attorney, into the court aforesaid, and filed the following petition, to wit:

DOE on demise of WALDEN
vs.
CRAIG & SHOCKEY.

To the judge of the circuit court of the United States, John Doe on the demise of Ambrose Walden, by Robert Wickliffe, his attorney, represents: That since the suing out of the writ of scire facias, in this case, and whilst the cause was depending before the Supreme Court, the demise in the declaration has again expired, whereby he cannot have judgment for execution, &c.; he therefore prays the court to extend the demise to one hundred, or any other period *which* the court in its reason may deem correct and proper, and he will ever pray, &c.

R. WICKLIFFE, *atto. for plaintiff.*

And on the same day the court made the following orders:

JOHN DOE, on demise of AMBROSE WALDEN, pl'tiff,
against
LEWIS CRAIG's heirs and ABRAHAM SHOCKEY, def't.
In ejectment.

This day came the plaintiff, by his attorney, and on his motion, it is ordered, that John Bing and Catharine Bing, his wife, John Craig, William Craig, Frances Boher, Thomas Tureman and Sarah Tureman, his wife, David Childs, John Childs, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Maccoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, one of the original defendants, and Abraham Shockey, the other original defendant, and Benjamin Umpstead, Thomas Blair, and Nicholas Proctor, the tenants now in possession of the land for which the judgment in ejectment was rendered:

Shew cause here on the 2d day of the next term of this court, why the demise in the plaintiff's declaration in ejectment shall not be extended to 100 years. And it is ordered, that a copy hereof be served upon said heirs of Lewis Craig, Abraham Shockey, Benjamin Umpstead, Thomas Blair, Nicholas Proctor, and on such other persons, if any, as may be found in possession of the land or any part thereof.

And upon a copy of the above rule the marshal made the following return, to wit:

Executed prior to December 25th, on Lewis Craig, Will. Elizabeth Kemp, Jane, Melvina, and Polly Craig, Cath. King, (Bing) Frances Basher, John McCoy and Frances, his wife, late Craig, David and John Childs, Ann, Maria, and Elizabeth Soward, John H. Craig, John N. Proctor, Thomas Blair, and Benj. Umpstead; the other defen-

dants not found; most if not all of them are no inhabitants, as I am informed.

JOHN M. McCALLA, *M. K. D.*

And afterwards, to wit, at the May term of the court aforesaid, in the year 1841, came the plaintiff's attorney, and the defendants in the above motion, by their attorney, entered their appearance; whereupon, the motions came on to be heard, but the court not being advised, took time, &c.

And afterwards, to wit, at the November term of the court aforesaid, in the year aforesaid, the following order was made herein, to wit:

The court being now sufficiently advised, do consider that the said motion to extend the demise in the declaration be overruled.

A copy.—Teste: JOHN H. HANNA, *C. C. C. K. D.*

Here follows a transcript of the record and proceedings, had in the case of

JOHN DEN, on demise Ambrose Walden,
against
LEWIS CRAIG and JONATHAN ROSE.

Pleas before the honorable Harvie Innis, judge of the district court of the United States of America, in and for the Kentucky district, holden at the Capitol, in the town of Frankfort, on the 19th day of June, in the year A. D. 1800.

Be it remembered, that heretofore, to wit, at a court of the United States of America, holden in and for the Kentucky district, in the month of March, in the year of our Lord one thousand seven hundred and ninety-seven, came John Den, lessee of Ambrose Walden, by his attorney, and filed the following declaration in ejectment, to wit:

KENTUCKY DISTRICT, *to wit:*

John Den complains of Richard Fen, in custody, &c. For that, to wit, that whereas Ambrose Walden, on the fifteenth day of August, in the year of our Lord 1789, in Mason county, in Kentucky district aforesaid, had devised and granted, and to farm let, unto the said John Den, four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in Mason county aforesaid.

To have and to hold the said premises, with the appurtenances, to the said John Den, and his assigns, from the date of the said lease, unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered on the tenements aforesaid, with the appurtenances, in and upon the possessions of the said John Den, and ejected, drove out, and amoved the said John

Den from his said farm, his said term not yet being fully ended, and kept out, and still keeps out, the said John Den, so ejected, drove out, and amoved from his said possessions, and then and there did other injuries to him, against the peace, and to the damage of the said John Den sixty dollars; and therefore he brings suit. &c.

JOHN DOE,
RICHARD ROE,
Pledges, &c.
WM. CLARKE,
For plaintiff.

I am informed that you are in possession of, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to said premises, do advise you to appear on the first day of the next March term, in the court of the United States, for the district aforesaid, and by some attorney of that court, and then and there by a rule of said court cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

RICHARD FEN.

BOURBON COUNTY, *set:*

On the 22d day of February, 1797, came Thomas McGlanter, before me, the subscriber, one of the justices of the peace for said county, and made oath that, on the 17th day of this present month, February, he did deliver a copy of the foregoing declaration and notice on the premises, in the declaration mentioned, unto Jonathan *Ron*, he being tenant in possession of part of the premises in said declaration mentioned; and that he also on the same day did deliver another copy of the said declaration and notice to the wife of Charles Rutter, one other tenant in possession of other part of the premises in the said declaration mentioned; and also on the same day did deliver another copy of said declaration and notice unto the wife of Wm. Allen, one other tenant in possession of other part of the premises in the declaration of ejectment mentioned; and this deponent further saith, that he told them all severally that it was a declaration in ejectment, and unless they did appear by some attorney of the court of the United States for the Kentucky district, the next ensuing term, there would be judgment thereupon against the defendant by default, and they would be turned out of possession, or words to that effect.

WILL. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, to wit:

It appearing to the court by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action, it is

therefore ordered by the court, that said defendants appear here on the first day of the next term of this court, [and] cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto, or on failure thereof, (they severally having notice of this order,) judgment shall be entered against the casual ejector, and the writ of habere facias possessionem be awarded the plaintiff.

And afterwards, to wit, at the March term, in the year 1798, the following order was made herein:

On motion, it is ordered by the court, and by the assent of parties, that Lewis Craig, together with the defendant, Jonathan Rose, be made defendants to this suit instead of the casual ejector, Richard Fen, and that he will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein supposed, and plead thereto not guilty, and agree to insist upon the title only at the trial.

And it is *it is* further ordered, that if upon the trial of the issue a verdict should be given for the defendants, and the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessor of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself doth not pay them.

Whereupon the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the injury, when and where, &c., and say they are in no wise guilty of the trespass and ejectment, in manner and form as the plaintiff hath against them complained, and of this he puts himself upon the country, and the plaintiff doth so likewise; therefore let a jury come, &c.

And it is further ordered, that Milus W. Conway do go upon the land in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there lay off and survey the same as either party may direct, having regard to all deeds and other evidence, report all matters of fact specially, and return four fair plats and certificates unto the clerk's office of this court, before *they* day of hearing; and the sheriff of Mason county is directed to attend said surveyor to remove force, should any be offered; and further proceedings are continued until next court.

And afterwards, to wit, at the June term of the court aforesaid, to wit, the 19th day of June, in the year of our Lord 1800, (until which time this cause was continued,) the following special case was submitted to the court by the consent of the parties herein, to wit:

The tract of land marked on the plot by the letters A, B, C, D, was duly granted to the said Walden, lessor of the plaintiff, by patent from the Commonwealth of Virginia, bearing date the 20th day of November, 1786.

The said Walden and Simon Kenton executed the agreement marked A, respecting the locating of said land; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plot by the letters E, F, G, C, and claim the said part of the said tract of land under the said agreement A, and the endorsement thereon, and a division thereof made, as certified by the report B; which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land, marked on the plat as aforesaid by the letters E, F, G, C, is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendant.

WM. CLARK, *Att. for plaintiff.*
THOMAS TODD, *Att. for defendant.*

The court having fully considered and understood said case, is of opinion that the legal title to the said part of the said tract of land, marked on the plat by the letters E, F, G, C, is in the plaintiff, and was on the filing of the declaration in said suit.

It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Jonathan Rose, his term aforesaid, in the premises aforesaid, with the appurtenances, yet to come and unexpired, and his cost by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of habere facias possessionem is awarded him in this suit, to cause him to have possession of the term aforesaid, returnable to next court.

The following are the exhibits made a part of the agreed case:

MASON COUNTY, *to wit:*

We, the commissioners appointed by the worshipful the court of Mason aforesaid, for the purpose of dividing lands held in partnership between citizens of this commonwealth and non-residents, and being called upon to divide a tract containing 1,333 acres, patented in the name of Ambrose Walden, between him, the said Walden, and Lewis Craig, assignee of Craig and Johnson, and assignee of Simon Kenton, the locator of said tract; two-thirds of which said tract is the property of said Walden, and the other third the property of the said Lewis Craig as aforesaid, proceeded this day to divide the same in the said proportions, that is to say, one third to the said Craig, and the remaining two-thirds to the said Walden, as follows, to wit: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence N. 22 E., with the old line, 155 poles, to two white ashes and sugar tree; thence N. 61 W., 329 poles, to a walnut and two red oaks, in Johnson's line; thence S. 51 W., with Johnson's line, 168 poles, to three white oaks in John Walden's line; thence to the beginning, containing 320 acres. To have and to hold the said 320 acres to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, or hindrance of him, the said Walden, his heirs, &c., forever; and to hold to him, the said Lewis Craig, his heirs, &c., in severalty, and no longer subject to the claim of him, the said Walden.

Also divideth the said tract of land as followeth, to wit: Beginning at two white oaks and sugar tree, in John Walden's line, and corner to said Lewis Craig; thence N. 22° E., 375 poles, to a red oak and honey locust; thence N. 68 W., 260 poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line S. 39 E., 112 poles, to two buckeyes and white oak, east corner to said Johnson; thence S. 51° W., 340 poles, to a walnut and two red oaks, corner to Lewis Craig; thence S. 61° E., 329 poles, to the beginning. To have and to hold the said tract of land, containing 640 acres, to him, the said Ambrose Walden, and his heirs, &c., forever in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare that the residue of said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but left in tenantry in common between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of said interference may justify.

In witness whereof we, the said commissioners, have hereunto set our hands, and affixed our seals, this tenth day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered, before—

MASON COUNTY, *sct:*

April court, 1794.

This division of land, between Walden and Craig, was returned by the commissioners, and ordered to be recorded.

Teste: THOS. MARSHALL, Jr., *M. C.*

Articles of agreement, made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth:

That the [said] Simon Kenton doth bind himself to locate ten thousand acres for the said Walden in the district of Kentucky; in consideration of which the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the said Simon Kenton, respect being held to quality and other local advantages; and, lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON ✕ KENTON, [L. S.]
mark.
AMBROSE WALDEN. [L. S.]

Signed, sealed, and delivered, in presence of—
ANGUS CAMERON,
JOSEPH CATRITE,
STEPHEN HUSTON.

I do assign all my right, title, and interest of the within article to John Craig and Robert Johnson, this 21st day of April, 1787.

SIMON KENTON. [SEAL.]

WILSON, TURNER, and
JONUS TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May 18th, 1791.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig the third part of the 3,000 acre entry in the name of John Taylor, and one third of 3,500 acres in the name of William Nelson; John Craig's interest is only given up. December the 28th, 1793.

ROBERT JOHNSON,
Trustee to Jno. Craig.
ELIJAH CRAIG,
Trustee to Jno. Craig.

[For plat, see original.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.

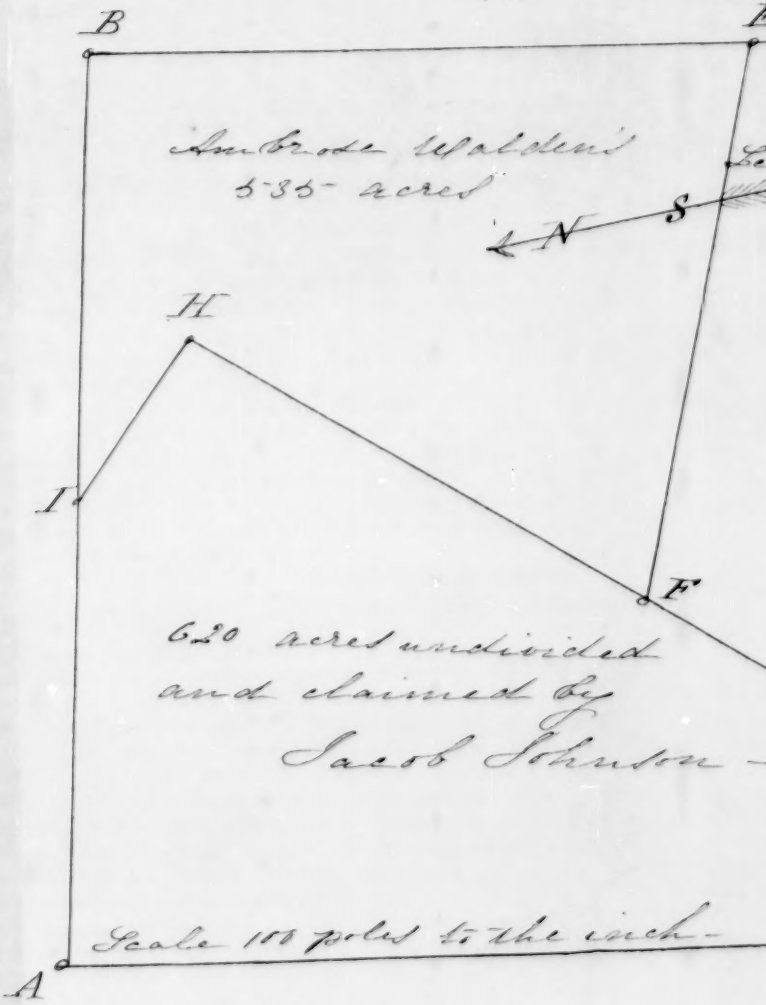
February 10th, 1794.

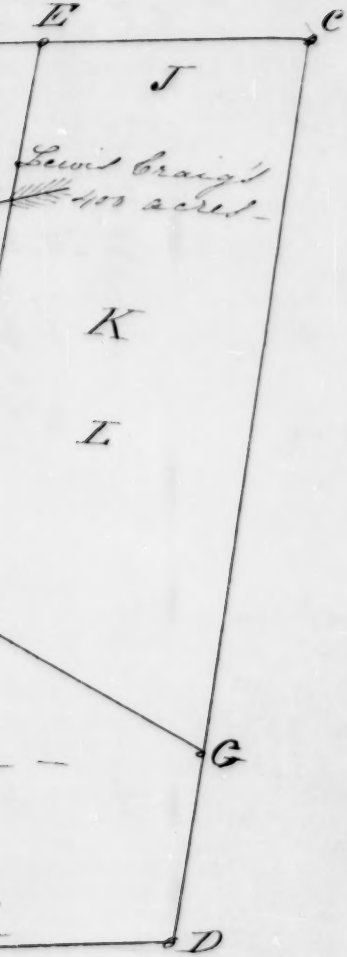
Surveyed for Ambrose Walden 1,555 acres of land, situate in Mason county, and on the waters of Johnson's fork of Licking, and bounded as followeth, to wit:

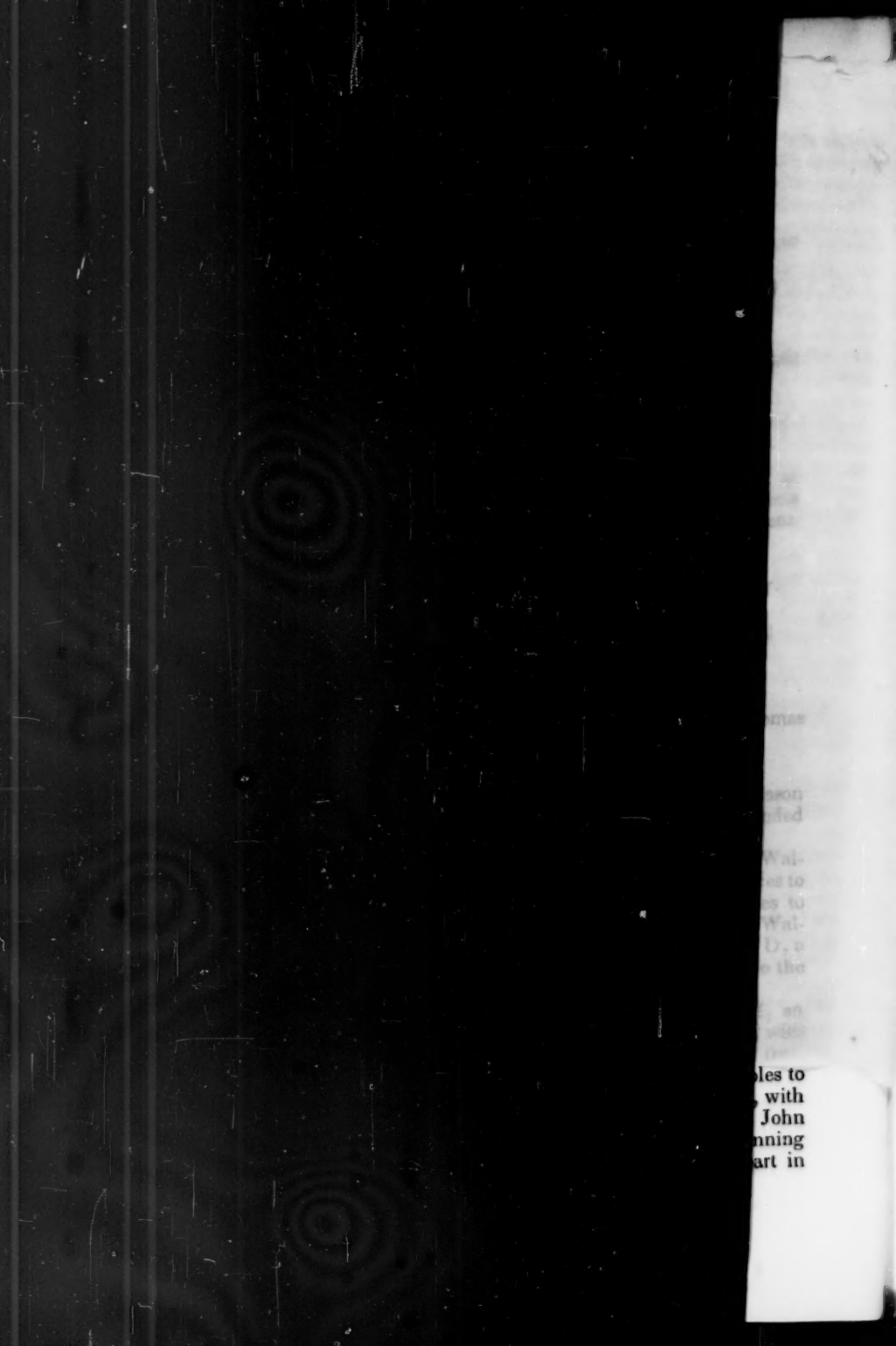
Beginning at A, buckeye and hoop ash stump, shown for said Walden's most northwestwardly corner; thence south 68° east, 520 poles to B, two red oaks and honey locust; thence south 22 west, 530 poles to C, an ash, Spanish oak, mulberry, and buckeye, corner to John Walden's survey; thence, with his line, north 61 west, 524 poles to D, a hickory, red oak, and white oak; thence north 22 east, 424 poles to the beginning.

Also divided the above land as follows, to wit: Beginning at I, an ash, Spanish oak, mulberry, and buckeye; thence north 22° east, with John Walden's line, 155 poles to E, two white ashes and sugar tree, corner to Ambrose Walden's land; thence north 61 west, 329 poles to F, a walnut and two red oaks, in Jacob Johnson's line; thence, with the same, south 57° west, 168 poles to G, three white oaks, in John Walden's line; thence, with the same, south 61° east, to the beginning at C, including 400 acres for Lewis Craig, as his equal third part in

324


B
Ambrose Walden's
535 acres
N
S
H
I
F
620 acres undivided
and claimed by
Jacob Johnson
Scale 100 poles to the inch
A


E
C
J
Lewis Craig's
400 acres
K
L
G
D



quality of that part of Ambrose Walden's survey of 1333 acres by patent that is not included in Jacob Johnson's survey; surveyed as the commissioners of Mason county allotted and divided.

Also divided the above land as follows, to wit, beginning at E, two white oaks and sugar tree, corner to Lewis Craig's 400 acres; thence N. 22° E., 375 poles to B, a red oak and honey locust; thence N. 68° W., 260 poles, to I, a white oak and box elder in said Johnson's line; thence with the same S. 39° E., 112 poles, to H, two buckeyes and white oak, corner to said Johnson; thence with his line S. 51° E., 340 poles to F, a walnut and two red oaks, corner to said Craig; thence S. 61° E., with his line to the beginning at E, including 535 acres for the said Ambrose Walden, as his equal two-thirds in quality, all that part of said Walden's survey of 1333 acres by patent, that is not included in Jacob Johnson's survey, surveyed as the commisioners of Mason county allotted and directed; and the remaining six hundred acres, as known in the plat by the letters A, I, H, G, D, is that part of said Walden's survey of 1333 acres, that is claimed by a survey of Jacob Johnson, and left undivided by the said commissioners.

WHITFIELD CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat J; also sold to William Allen, and marked in the plat thus, K; also sold to Wm. Proctor, and marked on the plat thus, L. The said Rose, Allen, and Proctor is living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point out. Surveyed by me,

WHITFIELD CRAIG.

And afterwards, to wit, on the 4th day of August, 1800, the following habere facias was issued on the foregoing judgment:

[SEAL.] United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the U. States for the Kentucky district, and by the judgment of the same court, recovered against Lewis Craig and Jonathan Rose his term yet to come of and in four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

To have and to hold said premises, with the appurtenances, to the said John Den, and his assigns, from the 15th day of August, A. D. 1789, until the full end and term of ten years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed until the said Lewis Craig and Jonathan Rose afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered upon the tenements, with the appurtenances, in and upon the posses-

sion of the said John Den, and ejected [and] drove out the said John Den from his said farm, his said term not being yet ended; and kept out, and still keeps out, the said John, so ejected, drove out, and amoved, from his said possession, whereof the said Craig and Rose are convict, as appears to us of record.

Wherefore we command you, that, without delay, you cause the said John Den to have his possession of his farm aforesaid, yet to come of and in the lands and tenements aforesaid, with its appurtenances, and how you shall execute this our writ make appear on the third Monday in November next, before the judge of our district court, at the Capitol, in the town of Frankfort; and have then there this writ.

Witness Har*vie* Innis, esq., judge of our said district court, hath caused the seal thereof to be affixed hereunto, the 4th day of August, 1800, and of our independence the 25th.

Teste: THOMAS TUNSTALL, *C. K. D. C.*

The above habere facias was returned by A. Walden, on the 5th day of September, 1811.

And on the 14th day of September, 1811, the above habere facias was renewed, delivered to A. Walden, and returned by him the 16th day of May, 1812.

And on the 2nd day of June, 1812, the following habere facias was issued, to wit:

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

Whereas John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, by the judgment of said court, hath recovered against Lewis Craig and Jonathan Rose his term yet to come of and in four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable land, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid; to have and to hold the said premises, with the appurtenances, unto the said John Den and his assigns, from the 15th day of August, in the year of our Lord 1789, unto the full end and term of ten years thence next ensuing to be fully ended and complete. By virtue of which said demise the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Rose afterwards, to wit, on the day and year aforesaid, at the county and district aforesaid, with force and arms, &c., entered into the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved from his said farm, his said term not being yet ended, and kept out, and still keeps out, the said John, so ejected, drove out, and amoved, from his said possession; whereof the said Rose and Craig are convict, as appears to us of record.

Therefore we command you [that,] without delay, you cause the said John Den to have possession of his farm aforesaid, his term yet to

come of and in the land and tenements, with the appurtenances; and how you shall execute this writ make appear on the first Monday in August next, before the judge of our said district court, at the Capitol, in the town of Frankfort, and have then there this writ.

Witness Harry Innis, esq., judge of our said district court, hath caused the seal of said court to be hereunto affixed, this 2nd day of June, A. D. 1812, and of our independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return, to wit:

Stayed by supersedeas; 62 miles travelling.

JOHN A. MITCHELL, *D.*
For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, on the 8th day of June, 1812, came Craig and Rose and filed the following petition and order for supersedeas, to wit:

Petition of Craig and Rose.

To the honorable the judge of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth: Your petitioners, Lewis Craig and Jonathan Rose, that at the June term, 1800, a judgment in ejectment was entered against them in the circuit court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for 4 dwelling-houses, &c., on which, since the last term of said court, an habere facias possessionem has been issued against them.

Your petitioners are advised that the issuing of said habere facias is both irregular and illegal, and they are furnished by their counsel with the following assignments of error, to wit:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued, after a lapse of a year after the entry of judgment, without a scire facias. Runnington on ejectment, 142.

2dly. The term had expired before the entry of judgment, of course the judgment itself is impeachable; but is sufficient for the petitioners that no habere facias can be legally issued when the term has expired. Runn. on ejectment, 146, '7, 283, 122.

Your petitioners therefore pray a supersedeas may issue, &c., &c.

J. HUGHES,
For Craig and Rose.

UNITED STATES OF AMERICA, *Kentucky district, sct:*

Order for supersedeas.

Issue a supersedeas, agreeably to the prayer of the foregoing petition, taking bond and security according to law.

Witness my hand, as judge of the said district, this 6th June, 1812.

HARRY INNIS.

To John H. Hanna, clerk of the U. S. C. C., &c., &c.

Injunction bond.

Know all men by these presents that we, Lewis Craig, Jonathan Rose, and Thomas Bodley, all of the State of Kentucky, are held and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars; to the payment of which, well and truly to be made to the said Walden, his heirs, executors, or assigns, we bind ourselves, our heirs, executors, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 8th day of June, 1812.

The condition of the above obligation is such, that whereas the above named Lewis Craig and Jonathan Rose have this day obtained a writ of supersedeas to stay the further proceedings on a writ of habere facias possessionem, which issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, 1812, wherein John Den, lessee of the above named Ambrose Walden, is plaintiff, and the above named Lewis Craig and Jonathan Rose are defendants, for the possession of four dwelling-houses, 20 out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, and district aforesaid.

Now, if the said Craig and Rose shall prosecute the said supersedeas with effect, or, in case of failure thereof, the said Craig, Rose, and Bodley shall well and truly pay, or cause to be paid, all damages and costs as may be awarded against the said Craig and Rose in case the proceeding aforesaid shall be confirmed, then the above obligation to be void, else to remain in full force and virtue.

THOS. BODLEY, [SEAL.]
By J. Hughes, his attorney in fact.

Witness: SAMUEL J. M. MAJOR.

The words "the above bound" interlined between the 19th and 20th lines before signed.

Supersedeas.

[SEAL.] The United States of America, to the marshal of the Kentucky district, greeting:

You are commanded, from all further proceedings on a habere facias issued from the office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein John lessee of Ambrose Walden, is plaintiff, and Lewis Craig and Jonathan Rose are defendants; which habere facias issued on the 2d day of June, 1812, against the said Lewis Craig and Jonathan Rose, for the possession of four dwelling-houses, 20 out-houses, 15 acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason and district , you altogether supersede; which habere facias, before the

judge of the seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Jonathan Rose, who hath given bond and security to prosecute with effect, and, if the proceedings aforesaid should be affirmed, to satisfy and pay all such damages and costs as shall be awarded against them.

We command you to give notice to the said Ambrose Walden that he be before the judges of our seventh circuit court, at the Capitol, in the town of Frankfort, on the first Monday in November next, to show cause why the said habere facias should not be quashed, and have then there this writ.

Witness John Marshall, chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our independence.

Attest: JOHN H. HANNA, *C. C. C. K D.*

Marshal's return.

Executed 17th June, 1812; 62 miles travelling.

JNO. A. MITCHELL, *D.*

For ROBERT CROCKETT, *M. K. D.*

And afterwards, to wit, at the May term of the 7th circuit court aforesaid, in the year 1813, the following order was made herein, to wit:

The court being now sufficiently advised of and concerning the premises, do order that the executions issued herein be quashed, they having been issued after the expiration of the demise in the declaration mentioned, and that the said plaintiffs recover against the lessor of the defendant their cost in this behalf expended.

And afterwards, to wit, at the July term of the court aforesaid, to wit, on the 5th day of August, 1817, the following order was made herein, to wit:

This day came the plaintiffs in the above suit, and moved the court for a rule on the defendants aforesaid to shew cause, on the 6th day of the next term of this court, why the demise in the declaration should not be extended.

And, on the 22d day of May, 1819, the following habere facias was issued herein, to wit:

WALDEN'S LESSEE
against
CRAIG & ROSE.

Dated 22nd May, 1819.

His term yet to come of and in four dwelling-houses, 20 out-houses, 15 acres of meadow, one hundred acres of arable land, and three hundred acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the district of Kentucky.

This execution was made returnable to the July rules following, but was not taken out of the office.

And afterwards, to wit, at the November term of the court aforesaid, in year 1821, (until which time this motion was continued,) the following entry was made, to wit:

JOHN DEN, on demise of Ambrose Walden, pl'tiff,
against
LEWIS CRAIG and JONATHAN ROSE, defendant. } In ejectment.

On a motion to extend the demise laid in the declaration, the court being advised, do order that said motion be overruled.

Be it remembered, that on this motion Walden to support his motion produced and read the declaration, proceedings, and judgment in an action of ejectment brought in this court by the said Walden, in the name of his lessee, John Den, against said Rose, &c., in which a judgment was obtained at the June term, 1800, of the district court, for the district of Kentucky, having the jurisdiction of a circuit court; which declaration, proceedings, and judgment are made part of this bill of exceptions. And also produced and read to the court the bill, answer, decree, and other proceedings in a suit in chancery, brought in the said district court, in the name of Thomas Bodley, &c., against the said Ambrose Walden, and which decree was rendered at their May term, 1809. The said Walden, also, by his counsel, produced and read to the court the bill, answer, proceedings, and decree in another suit in chancery, commenced in this court in the name of Thomas Bodley, &c., against said Walden, which suit was discontinued at the April rules, in the year 1813. He also produced and read the habere facias possessionem issued on said judgment and ejectment, and the proceedings and judgment of said court quashing the same. Whereupon, the said Walden, upon the whole case and upon a rule of this court vs. Craig and Rose to shew cause, &c., which was served upon said Craig and Rose, as will appear by the record of this motion, moved the court for leave to amend and extend the demise laid in the declaration and ejectment, because the same had expired during the pending of said proceedings, as appeared by the orders, decrees, and proceedings in the said suit in chancery; but the court being divided in opinion, refused to give leave to amend and overruled said motion; to which opinion of the court the said Walden, by his counsel, excepts, and prays his bill of exceptions to be signed, sealed, &c.

MEMO.—The opinion and decision in this cause was delivered when the court was full, but the bill of exceptions not being prepared by the counsel of the plaintiff until our judge returned home for the term, the exceptions can be signed by one judge only. The several records herein referred to being records and proceedings in this court, are ordered to be certified as a part of the bill of exceptions, without entering them on the order book.

THOMAS TODD. [SEAL.]

And afterwards, to wit, at the May term of the court aforesaid, in the

year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made herein, to wit:

JOHN DEN, on demise of Ambrose Walden, pl'tiff,
against
LEWIS CRAIG and Jonathan Rose, defendants. } In ejectment.

Demise extended.

On motion of the plaintiff in this cause, by his attorney, leave is given to amend the decree, by extending the demise to fifty years, which is done accordingly, but execution not to go out before the 1st day of March next.

Petition of John Proctor.

And afterwards, to wit, on the 8th day of May, 1835, came John Proctor into the court aforesaid, and filed the following petition, to wit:

To the honorable the judge of the United States *circuit*, for the seventh circuit and Kentucky district: Your petitioner, John N. Proctor, humbly represents, that in the year 1797 a certain Ambrose Walden, on the demise of Den, instituted an action of ejectment in the district court in this district, against Fen as casual ejector, and during the following year Lewis Craig and Jonathan Rose were admitted to defend said suit, and at the June term, 1800, a judgment was rendered in favor of said Walden for the land, then in possession of said Rose, the tenant in possession, but no writ of possession has ever been executed on said judgment; that the demise in said declaration was laid at ten years from the 15th day of August, 1789, and of course expired the 15th day of August, 1799, and remained dead and inoperative for about twenty-five years; by which lapse of time your petitioner is informed, the possession *referred* into a complete legal estate; but at the May term, 1824, of your honorable court, on motion of the said Walden, the demise aforesaid was amended by inserting a new one of fifty years instead of ten, which has been inserted in the original declaration without the knowledge of [or] notice to either Craig or Rose, as your petitioner is informed and believes, or any other person interested in said land, and said ex parte order was not discovered until after the term was over. Your petitioner is advised, that said order was surreptitiously obtained, and improvidently made for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment, perfectly dead for upwards of twenty years, and that for the following facts and reasons, viz:

After the expiration of the demise in said Walden's declaration, viz., in the latter part of 1800, as your petitioner is advised, Rose, the tenant in possession of the land, claimed by said Walden from Bodley and Pogue, who claimed under a patent in the name of Tibbs for 10,000 acres of land, posterior in date to that of said Walden, and adverse thereto, for which he held the land of said Bodley and Pogue for 130 acres of land, which bond was satisfied by the execution of a deed September, 1821, and between the years 1814 and 1819, and whilst the said continued dead; your petitioner, about the year 1816 or 1817, said Rose

sold by ex. contract, the said tract of land to his son, Jonathan H. Rose, and delivered the possession thereof to him, and the said Jonathan H Rose continued on said land, and was in fact the terre-tenant at the date of the extension of the demise, viz., the 8th May, 1824, and the said Jonathan H. had no notice or knowledge of said extension whatever, but the whole proceedings as to him *was* ex parte; and your petitioner states, that during the [year] 1826, he purchased by bond of said Jonathan H. Rose, and took possession of said land in March, 1827, and shortly afterwards received a deed therefor from said Rose, without any knowledge upon his part of the extension of said demise, and when as he is advised the title of said Rose *referred* into a complete legal title; the said Lewis Craig was not a terre tenant, but was entered a defendant with Rose on account of his sale to said Rose of the land in contest. Your petitioner is advised, that under this state of facts his redress is by motion to annul and reverse said order renewing the demise; and he prays for such relief and for such other relief as his and as in duty bound, &c.

JOHN N. PROCTOR.

The said Proctor saith that manifest error hath intervened in the record and proceedings to his prejudice, in this, viz:

1st. The land in question had been possessed adversely for upwards of twenty years after the first demise had expired, and previous to the order extending it, and no extension and renewal of the same ought to have taken place.

2nd. No renewal of the demise ought to have taken place without notice to Lewis Craig and Rose, the one the landlord, and the other the terre-tenant, when the suit was brought.

3rd. It was irregular to renew the demise after it had expired, without notice to Jonathan H. Rose, the terre-tenant.

4th. The whole proceedings was irregular, collusive, and void, and ought not to have been granted.

MOREHEAD & BROWN.

And upon the filing the said petition, the said Proctor move the court for a rule on the defendant to shew why the order extending the demise in the declaration described and set forth in their petition should not be set aside.

Whereupon the defendant, by his attorney, entered his appearance to said rules, and the arguments of counsel being heard in part only, the same is laid over.

And afterwards, to wit, on the next day, to wit, the 9th of May, the court now being sufficiently advised of and concerning the plaintiff's motion, do consider that the defendant shew cause, on or before the sixth day of the next term, why the order made at the May term of this court, in the year 1824, extending the demise in declaration of John Den, on demise of Ambrose Walden, against Jonathan Rose and Louis Craig, and John Den on demise of said Walden against Lewis Craig and Abraham Shockey, should not be set aside or amended.

And afterwards, to wit, on the 30th day of May, 1835, the following habere facias was issued herein, to wit:

JOHN DEN, on dem. A. WALDEN,
against
LEWIS CRAIG & JONATHAN ROSE.

Execution dated 30th May, 1835.

His term yet to come of and in four dwelling-houses, twenty out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnston's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will not deliver to the plaintiffs, upon this execution, any land outside of the location part, nor any land within which is enjoined by the order of December 2d, 1834.

This execution was made returnable to the 1st Monday in August, 1835, and delivered to Walden, but never returned to the office.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836, the following order was made, to wit:

JNO. N. PROCTOR
against
AMBROSE WALDEN.

The evidence having been heard, and this motion having been argued on a former day of the court, and the court being now sufficiently advised of and concerning the premises, and the judges being divided in opinion, it is considered by the court that said motions be overruled, and that defendant recover of the plaintiffs his costs expended in these motions.

And afterwards, to wit, on the 18th day of November, 1836, the following habere facias was issued herein, to wit:

JOHN DEN, on dem. AMBROSE WALDEN,
against
JONATHAN ROSE, LEWIS CRAIG, the other defendant having departed this life.

Execution dated 18th November, 1836.

His term yet to come of and in four dwelling-houses, twenty out-houses, 15 acres of meadow, 100 acres of arable land, and 500 acres of wood land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork of Licking, in the county of Mason, in the district aforesaid.

The marshal will deliver only so much of the land to the plaintiff in this suit as lies within the following boundary:

Beginning at a stake six feet north of a white oak tree, corner of Walden, as last surveyed, represented at 8 on the connected plat; and running thence with that line S. 37° 25′ E., 297 poles, to a stake in a line of Walden's original survey, in Tibbs' lane, at f; thence with that

line S. 20° W., 288 poles, to a stake in a lane at the intersection of the decreed line, 82 poles, N. 20° E. from said Walden's original corner, near Proctor's, at G; thence with the decreed line S. 25° 35′ W., 95 poles, to a stake in another of said Walden's old lines, in cleared land, at h; thence with the old line N. 70° W., 220 poles, to a *stat* i, in another of the decreed lines; thence with that line N. 37° 25′ W., 273 poles, to two buckeyes and sugar tree, at 7; and thence N. 53° 35′ E., 461 poles and 21 links, to the beginning, containing by said survey 1,144 acres 2 roods and 22 poles.

This execution was made returnable to February rules, 1837, delivered to *John* Walden, and never returned.

And afterwards, to wit, at the November term of the court aforesaid, to wit, the 19th of November, 1836, the following order was made herein, to wit:

JOHN DEN, on dem. of Ambrose Walden, plaintiff,
vs.
JONATHAN ROSE, surviving defendant, with Lewis Craig, defendant.

On motion defendant to quash habere facias.

This day came the parties, by their attorneys, and the defendant, by his attorney, moves the court to quash the execution issued in this cause, on the following grounds:

1st. That there is no legal or valid judgment upon which the execution could regularly issue.

2nd. That the judgment, such as it is, was rendered more than twenty years ago, and it was irregular and illegal to issue any execution on it without scire facias first sued out against the defendant, &c. L. Craig is dead, and the execution could not regularly issue against the survivor without revival.

3rd. There is no judgment upon which, without a revival by scire facias, any execution could regularly or legally issue.

4th. That the execution irregularly and illegally issued on a judgment inoperative, and which, from lapse of time, gave no right to the clerk without being revived to issue the execution, or any other.

And the argument of counsel being heard, but the court not being advised, took time, &c.

And at a subsequent day of the term aforesaid, to wit, the 21st day of November, 1836:

The court being sufficiently advised of and concerning the defendant's motion to quash the execution in this case, do consider that the habere facias which issued in this case on the 18th November inst. be, and the same is quashed; and that the defendant, in said execution above recited, recover of the lessor of the plaintiff, Ambrose Walden, their costs herein expended.

And on the same day of the November term aforesaid, to wit, the 21st November, 1836, the following entry was made herein, to wit:

Be it remembered, that on the above motion being made in court by the counsel of the plaintiff therein, the counsel for Walden objected to the said motion made, and to there being then received or heard by the court, on the following grounds:

1st. Because there had been no notice given to the said Walden, his agent, or attorney.

2nd. Because the court having, on the day before the making of the motions, disposed of all the business before it, mentioned on the adjournment that the court would meet next day for the purpose of hearing read and signing the orders; and the circuit judge had accordingly left, and was not then on the bench.

On the hearing of these objections it appeared, on the first ground, that the counsel of Walden, before the issuing of the said execution, suggested the death of the said Craig, and caused the same to be recited in the execution; and his death was in no wise controverted by either party.

And on the other ground of objection it appeared that the clerk had, on the dissolution of the injunction on the day of the present term, by which the said Walden had been enjoined from suing out execution on the judgment in ejectment, informed the counsel of Walden that he would refuse to issue a writ of habere facias, unless he was ordered or instructed to do so by the court, and requested him to make his motion for that purpose within the term; but that he had afterwards, upon receiving a bond of indemnity from the agent of Walden, and three days before the making these motions, informed the counsel of both parties that he would, in consequence thereof, issue the execution.

That before the adjournment of the court on the day before the motion was made, when the business was disposed of, it was mentioned from the bench that the court would adjourn to meet next day to hear and sign the orders; upon which the counsel of Walden inquired whether any other business would be done; to which the district judge, who it was understood would constitute the court next day, answered, that he hoped not; to which the counsel of the plaintiff in these motions answered, that he did not know that he would have any business, but that if he should have any motion to make he would certainly make it; upon which the court adjourned to the usual hour next day.

It appeared from the statements of the counsel of the plaintiffs in the motion, whose clients had not attended and were absent, that he had understood, when it was said the bond of indemnity was given, that the clerk intended to issue, and the counsel or agent of Walden intended to take out, the execution; yet he did not know or believe, until in the night after the adjournment of the court, on the day before the making of the motion, that the execution had issued; and that he then informed the counsel of Walden that he would, on the next day, make the motion in court.

On the above state of [the] case the court was of opinion, on the first ground, that no other notice of the motion was necessary. And on the second ground of objection, the court was of opinion that it did not ap-

pear that the counsel of the plaintiff in the motion had sought this occasion, when the court was constituted of the district judge only, to make said motion, and that the apparent necessity for the hearing thereof by the court, when not full, was not caused by him, either intentionally or otherwise.

And thereupon the court overruled the objections of the counsel of Walden to the court receiving and hearing said motion, and decided that the motion might proceed.

On the hearing of the motion, the records, orders, and proceedings in the action of ejectment in this suit, and of the suits in chancery, and several bills filed therein, and orders and decrees made in the several cases of Bodley, &c., vs. Walden, and the order in this case extending the demise in the declaration, and the record of the case of the rule obtained and motions made in said action of ejectment, to have the said order allowing the said demise to be extended quashed and set aside; and the proceedings and orders of the court in said rule and motion were altogether with the record of the habere facias which this motion was made to have quashed, referred to, and given in evidence, and made part thereof, so that the whole may appear in any transcript of the record of this motion, which may be made for the purpose of a writ of error, or any other purpose.

On the above matter appearing in the records, and the fact of the death of the said Lewis Craig before the issuing of the said habere facias, which was admitted by the parties, the court, on the grounds filed and constituting a part of the record of this case, sustained the said motion, and quashed and set aside said writ of habere facias.

To which several decisions of the court above stated the counsel of Walden excepted, and prays that this his bill of exceptions may be signed, sealed, and enrolled, and the same is allowed.

THOS. B. MONROE. [SEAL.]

And afterwards, to wit, at the November term of the court aforesaid, to wit, on the 9th November, 1840, the following order was made, to wit:

JOHN DOE, on dem. of Ambrose Walden, plaintiff,
against
LEWIS CRAIG'S Heirs, and Jonathan Rose, def'ts.

This day came the plaintiff, by his attorney, and on his motion, it is ordered, that John Bing and Catherine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Childs, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kemp, Oliver Craig, Francis Craig, Macoy Craig, Jane Craig, Malvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, one of the original defendants, and Jonathan Rose, the other original defendant, and Benjamin Umpstead, Thomas Blair, and Nicholas Proctor, the tenants now in possession of the land for which the judgment in ejectment was rendered, show cause here on the 2nd

day of the next term of this court, why the demise in the plaintiff's declaration in ejectment shall not be extended to one hundred years.

And it is ordered that a copy hereof be served upon the said heirs of Lewis Craig, Jonathan Rose, Benjamin Umpstead, Thomas Blair, Nicholas Proctor, and on such other persons, if any, as may be found in possession of the land, or any part thereof.

Upon a copy of which order the marshal made the following return, to wit:

Executed, prior to December 25th, on Lewis Craig, Wm. Craig, Elizabeth Kempt, Jane, Malvina, and Polly Craig, Catherine King, (Bing) Francis Barker, John McCoy and Frances, his wife, late Craig, David and John Childs, Ann, Maria, and Elizabeth Soward, John H. Craig, John N. Proctor, Thos. Blair, and Benj Umpstead; the other defendants not found; most, if not all, of them are no inhabitants, as I am informed, or dead.

JNO. M. McCALLA, *K. K. D.*

A copy.—Teste: JOHN H. HANNA, *C. C. C. K. D.*

The following is the appeal bond executed herein, to wit:

Know all men by these presents, that we, Richard Walden, John Carter and Judith Carter, his wife, late Judith Walden, John Walden, and William Walden, heirs and representatives of Ambrose Walden, and Edward M. Blackburn, their security, are held and firmly bound unto Harry J. Bodley, William S. Bodley, Wm. H. Hurst and Anne J., his wife, John F. Bodley, Thos. Bodley, Charles S. Bodley, Ellen P. Bodley, and George J. Bodley, heirs and representatives of Thomas Bodley, deceased; and Harry J. Bodley, administrator of Thos. Bodley, deceased, Samuel Garrison and Jane, his wife, and William L. Pogue, heirs and representatives of Robert Pogue, deceased, Eli M. Pogue, Elizabeth J. Pogue, Franklin Pogue, Amanda C. Pogue, and Maria Edwin Pogue, heirs of Edwin P. Pogue, who was heir of Robert Pogue, deceased; Benjamin Umpstead, Robert Blair, and John N. Proctor, E. M. Pogue, Samuel Y. Garrison and wife, Wm. L. and E. P. Pogue, John Mackey, John and Linsey Pogue, heirs of Robert Pogue, deceased; Dan'l Clarke, Susan Sumrall, Thomas Clark, Mary H. McMillan, Susan Lacey, and Thomas Lacey, heirs of B. Clarke, deceased; Alfred Duncan, Jane Duncan, James Duncan, James Lindsey and Nancy, his wife, heirs of David Duncan, deceased; Larkin and Eliza Sandridge, Robert Taylor, senr., Robert Taylor, jr., and John D. Taylor, heirs of Drake, deceased, in the just and full sum of three thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 18th day of June, A. D. 1847.

The condition of the above obligation is such, that whereas the above bound Richard Walden, &c., have prayed for and obtained an appeal from the decree of the 8th circuit court of the United States, in and for the Kentucky district, to the Supreme Court of the United